



Examined
N.B.
11/4.

File No. 5. Dwr. 4/44

Legal-DEPARTMENT
A- BRANCH

Subject:—

L.C.S. No. 305 of 1943.

Prathad Kalso Kulkarni of Navalgund-- Pff.
v/s.

The Province of Bombay and Co. v/s. -- Def.

Claim. Rs. 400.

91 (E, K)

File No. 5. Dwr. 4/44.

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No. 673

Charwar 13th December 1943.

8

To

The Remembrancer of Legal Affairs,

Bombay.

Subject:-Sanction of defence in Charwar L.C. Suit
No. 305 of 1943.

Sir,

In accordance with Rule 113 of the Law Officers' Rules, I have the honour to submit herewith chronological statement of facts, grounds of defence and draft written statement in duplicate, together with all the case papers in one file, for favour of according sanction to the defence of the suit.

1. The suit has been numbered as Long Cause Civil Suit No. 305 of 1943.

2. It has been filed in the Court of the First Class - Sub-Judge, Charwar.

3. Plff:-Brahma Kalso Kulkarni of Navelund Taluka Co.
Vs.

Def:-The Provincial Government of Bombay.
No. 1

4. The value of the claim is Rs. 400/-

5. The suit was instituted on 26-7-1943.

6. The suit has been fixed on 25/1/1944 for putting in written statement on behalf of Government.

7. Notice of his intention to file a suit has been given by the plaintiff on 10-5-1943 to the Collector of Charwar.

It is submitted, therefore, that necessary sanction for the defence of the suit may kindly be accorded, with such alterations and amendments as may be deemed fit and proper, at an early date.

Your obedient servant,

S. R. Malabur

District Government Pleader.

Respectfully submitted through the Collector of Charwar, for favour of necessary action as per rule 113 of the Law Officers' Rules.

S. R. Malabur

District Government Pleader.

DEC 14 1943

L.C.Suit No.305 of 1943.

In the Court of the First Class Sub-Judge,
at Dharwar.

Plff:-Pralhad Kalso Kulkarni of Navalgund Taluka Do.

Vs.

Deft:-1. The Province of Bombay.
and six other defts.

Chronological statement of facts.

1. This is a suit for (1) a declaration that the order of the Bombay Revenue Tribunal No.0241 dated 9th ~~August~~ September 1942 which confirmed the order of the Collector, Dharwar, No.W.K.L.97 of 11th March 1942 accepting the relinquishment in favour of Government made by one Bhimabai Ganapatrao Kulkarni (deft No.2) of the following Kulkarniki watan lands of Navalgund and converting them into ordinary ryotwari unalienated lands as laid down in G.R.R.D.No.9712/28 of 6-4-1938 and 21-7-1939 is ultra vires, null and void and not binding on plff and his revisionary interests in those lands, and for (2) costs and (3) a declaration by way of gift made by deft No.2 Bhimabai of 99 acres and 26 gunthas in respect of these below mentioned lands, in favour of deft No.3 and by way of sale of R.S.No.104 in favour of defts 4 to 6 are void after the death of deft No.2.

Navalgund kulkarniki watan lands in suit converted into ryotwari lands S.Nos.

<u>S.Nos.</u>	<u>Area.</u>	<u>Assmtt.</u>
101	26-2	44-0-0
104	25-28	47-0-0
186	1-1	1-8-0
190	1-21	2-8-0
866/2	7-26	12-9-0
369	18-38	31-0-0
416	22-16	42-0-0
438	17-6	34-0-0
439	7-13	14-0-0

2. One Ganapat Martand Kulkarni husband of defendant No. 2 i.e. Bhimabai was the original holder and owner of the nine above mentioned Navalgund ~~Watan~~ Kulkarniki watan lands in suit and some five lands. This Ganapat and the plaintiff are descendants of ^{one} ~~one~~ common ancestor Annappa and are bhaubands about 7 or 8 degrees removed from the common ancestor. It appears that the Navalgund Kulkarniki watan lands were divided equally between the family of Ganapat and the plaintiff. Ganapat died in about 1893 leaving behind him his widow Bhimabai, deft No.2. In 1912 deft No.2 Bhimabai adopted one Venkatesh who married one Laxmibai.

Please vide
geneology
P. 73-75
file I.

P.53 H.C.
judgment in
F.A.No.321
of 1935.

3. It appears that subsequently in 1913 disputes arose between deft No.2 Bhimabai and her adopted son Venkatesh. Their dispute was referred to arbitration. Deft No.2 claimed before ^{the arbitrators} that she was entitled to retain till her death possession of the watan properties of her husband Ganapat by virtue of an arrangement between her and her adopted son Venkatesh. The arbitrators, without deciding whether the agreement had or had not been made, as claimed by deft No.2, gave her five R.S.Nos. viz., 85, 208, 367, 368 & 976 (kulkarniki watan lands of Navalgund P.79 file I), for her maintenance and for her expenses of pilgrimage. In this decision they said that the defts No.2 Bhimabai had become the sole and complete owner of the entire property of the adoptive family and they made this provision for maintenance. They gave one of the lands of Ganapati's family to one Tungabai (daughter of deft 2) and the rest to the adopted son Venkatesh.

Note:-
Arbitrator's award
is not in the copy
submitted

4. In 1918, Venkatesh, the adopted son died and a few months later, in the same year, his widow Laxmibai also died.

5. According to the law then existing, under Sec.2 of Act V of 1886 (Bombay Hereditary Offices Act) Bhimabai deft No.2 could not succeed her adopted son Venkatesh and therefore the lands now in suit which had been given to Venkatesh by the arbitrator's award went on his death to Bhimaji Kalso (the grand father of the present plaintiff).

Copy of will
P.33-41 file I.

In 1919 this Bhimaji took possession of these nine lands
Bhimaji who made a will on 24-2-1925 in favour of deft
No.2 Bhimabai, died on 3-3-1925 devising to her the
9 lands in suit which he had got as revisioner of
Venkatesh after the latter's death.

In 1925 Bhimabai (deft 2) filed special suit
No.184 of 1925 in the P.C. Sub-Judge's court, Dhurwar, for
possession of the said nine lands in suit from the
present plff claiming them under the will executed by
deceased Bhimaji Kalso on the 24th February 1925. The
present plff who was the deft No.1 in the suit of 1925
defended the suit. One of the main grounds for
defence raised by Pralhad Kalso was that Bhimabai
the then plff (now deft No.2) was a widow or a collateral
and was not a watandar of the same watan as that of the
deceased Bhimaji Kalso and therefore Bhimaji also could
not make a valid will in favour of Bhimabai. The learned
P.C. Sub-Judge, Dhurwar, who heard the suit held that
Bhimaji's will was duly executed and that Bhimabai (now
deft 2) was a watandar of the same watan as deceased
Bhimaji Kalso. He, therefore, decreed in favour of Bhimabai
claim for possession of the nine lands in suit. The
present plaintiff Pralhad filed an appeal to the High
Court (T.A. No. 321 of 1935).

In appeal, the High Court confirmed the decree
of the lower court in favour of Bhimabai and held that
she was a watandar of the same watan as deceased
Bhimaji Kalso. ~~He, therefore, decreed in favour of Bhimabai~~
~~the present plff~~
The present
plff Pralhad filed an appeal to the High Court (T.A. No.
321 of 1935) (the grand father of the present plff) -
reason of the fact that she was holding the five land
(watan property) given to her for maintenance by the
arbitrators in about 1919 by an award between her and
Venkatesh and that she became a person holding watan
property legally acquired subsequent to the
introduction of the British Government within the

P 63-69
file I
copy of the judgment
in 4.A. No. 321
of 1935

meaning of section 4 of the Watan Act (Bombay Hereditary Offices, ~~the~~ Act IV of 1874). Moreover, the High Court found that Bhimabai's occupation of the five lands was recognised by Government in 1921. Because Bhimaji Kalso (grand father of Plaintiff Venkatesh) had applied to the revenue authorities and to the Bombay Government to restore the five lands in possession of Bhimabai under the award (presumably on the ground that after the death of Venkatesh, the transfer of these lands under the award was bad under section 5 of the Watan Act.) But the Government of ^{Bombay} ~~India were pleased to decline~~ ^{to order} the restoration of those five lands to the applicant Bhimaji. ^{G.R.N.D. No. 567 of 1st Sept. 1921.} For these reasons the High Court held that deft No.2 Bhimabai was a watandar of the same watan.

7. Accordingly, deft No.2 Bhimabai obtained possession of the nine lands, now in suit, from the present plaintiff on 23-5-1938. in Spl. L.D.No.68 of 1938. ^{Shamwar}

P.1 file II
P.25 file I.

8. On 13-11-1941 Bhimabai deft No.2 applied to the Collector of Dharwar, requesting that the nine lands (kulkarni watan) in suit possession of which had been obtained by her in the Spl. darkhast mentioned ~~by her~~ above should be converted into ordinary ryotwari lands. She stated in her application that these 9 lands were her self acquired and her separate property and she was the full and absolute owner thereof (by virtue of the will and the High Court decree). She alleged that she had incurred debts of Rs.3 or 4 thousand rupees for the litigation and ~~she~~ owed a Tagai loan of Rs.1100/- to Government taken by her for improvement of lands Nos.35 and 976 in her possession in her capacity of a widow. She observed that no tenant was willing to take the lands on lease as they were full of weeds and she would be unable to pay even Government assessment in the present condition of lands. She, therefore, prayed for conversion of lands in suit, into ryotwari lands. ^{P.1 file I}

9. On 13-11-1941 the Collector forwarded the application to the Amaltdar Javalgund for inquiry and report through the - P.5 file I
It. Bhimabai was asked to be present before the Amaltdar, Javalgund, to give relinquishment and to produce persons having vitiorv interest in the said lands.

Mamlatdar submitted a report to the Assistant Collector that the necessary entry had been made in the village records

P.13 reverse of
file I, extracts
V.F.No.VII P.17-
35 file I

15. On 15th May 1942, the Collector in his number W.K.I. 97 was pleased to direct restoration of the nine lands relinquished to deft 2 Bhimabai on ordinary ryotwari return. The Collector gave this order of restoration in exercise of the powers vested in him under rule 2 of the rules published in G.R.R.D.No.9712/28 of 6-4-1938 read with G.R.R.D. bearing the same number and dated 21-7-1939.

P.39 file I.

16. Meanwhile on 7th May 1942, the plff Pralhad preferred an appeal from the order of the Collector dated 11th March 1942 to the Bombay Revenue Tribunal. On 9th Sept. '42 the Bombay Revenue Tribunal dismissed the plff's appeal, observing that, as held by the High Court Bhimabai deft No.2 having legally acquired the lands and holding them in her own rights, was a holder of the nine lands for the purposes of land revenue under Rule 74-A, that this was not a case of commutation of watan lands under section 15 of the Watan Act, but was a case of relinquishment of watan lands and their regrant of ryotwari lands, following their previous decision in B.R.T.No.0-160 of 1942 dated 30th May 1942 and finding that the order of the Collector was correct.

17. On 10th May 1943 the plff gave notice of suit under section 80 C.P.C. to the Collector, Dharwar.

18. On 16th July 1943 plff filed the present suit in the court of the F.C.Sub-Judge, Dharwar, praying for the following reliefs.

(1) A declaration that the order of the Bombay Revenue Tribunal is ultra vires, null and void and not binding on plff and his revisionary interests.

(2) Costs of suit and other equitable reliefs.

(3) For a declaration against defts other than Government that the alienation by deft 2 in favour of defts 3 to 6 are void after the life of deft 2.

(10) on 7-1-1942 ~~the~~ ^{Plf Prihad}

97

P 71

File I

made ~~in~~ a statement before the Mamletdar Navaigund, objecting to the conversing of the lands into Rayatwari lands, on the ground that Bhimabai's application was malaide and that his revisionary interests would be injured. On 17-1-1942,

P 79

File I

Bhimabai's statement was also recorded by the Mamletdar

(11) On 31st January 1942 Bhimabai (Defd 2) gave written notice of the relinquishment of the nine lands in favour of the Mamletdar Navaigund in form "L" under rule 74 and section-74 of the Bombay Land Revenue Code. The notice was duly attested by two witnesses:

P 99-101
File I

12. On 14-2-1942 the Mamletdar Navaigund submitted his report to the Assistant Collector observing that in his opinion Bhimabai's application was not bonafide that she was in possession in all of 240 acres of land, that her alleged debts were not bonafide that she could easily pay off Tagai out of the income of the lands and that by getting the lands conveyed, she would ^{waste away} the Vatan Property.

P 99-101
File I

P 11
File II

12. On 24-2-1942 the Assistant forwarded his report to the Collector observing that the objection of Plff Prihad to the conversion deserved consideration and that he could not recommend the conversion.

P 95

File I

P 11 & 13

File II

13. On 6-3-1942, the Collector however accepted the relinquishment of the nine lands made by Defd 2 Bhimabai and on 11-3-1942, the Collector was pleased to pass an order overruling the objection of Plff and accepting the relinquishment of the nine lands given by Defd 2. On the same day the Collector requested the P.C. IIIrd Division to take steps to enter the nine lands relinquished as unalienated and unoccupied lands in the Village Records subject to any rights, tenures, encumbrances or equities (other than those of the Government and the applicant Bhimabai) and submit extracts of village Form No. VII consequent on this change so that further action might be taken as laid down in G.R.R.D. no 9712 of 6-4-1930 and 21-7-1939.

14. On 16-3-1942, The Assistant III Division Dharwar forwarded the order of the Collector above mentioned to the Mamlatdar, Navaigund, for further action. On 3-5-1942 the

P 13 Reverse
File I
P 17-35 File II
(K. F. M. P. II)

Grounds of defence.

9 H

(I.) Notice of suit:- In para 10 of the plaint it is stated that the notice of suit has been delivered to the Collector. The manner or mode in which the notice was delivered to the Collector (whether by post or in-person) is not stated in the plaint. This would appear to make the service of notice defective. However, there seems to be no point as the notice has been accepted by the Collector.

Merits:- In para 5 (A to G) are given the various grounds on which the plff attacks the legality of the order of the Bombay Revenue Tribunal No.0-241 dated the 9th September 1942 in which the Collector's order - No.W.K.L.97 of 11th March 1942 by which the relinquishment of the suit kulkarniki watan lands of Navalgund given by Bhimabai was accepted.

(A.) In the first instance plff contends that Bhimabai is not a watandar and that the decision of the High Court in F.A.No.321 of 1925 that Bhimabai was a watandar, is not binding against Government. Plff's contention that Bhimabai is not a watandar is based on the ground that Bhimabai's possession of the five lands for her maintenance under the award by the arbitrators in 1913 which was without sanction by the Government under section 5 of the Watan Act, was not legal and could not constitute her a watandar. But it will be seen from the judgment of the High Court at page 65 of file I that in 1921 Government declined to restore possession of the five lands given to Bhimabai for maintenance under the award of 1913 to the deceased Bhimaji (grand father of the present plff) who had applied for the restoration to him presumably on the ground that after the death of Venkatesh the adopted son Bhimabai, the alienation of those five lands in favour of Bhimabai was bad under section 5 of the Watan Act. Their Lordships, therefore, held that the acquisition by Bhimabai of the five lands was legal and therefore, she was a watandar. Obviously, the High Court seems to find that there was implied sanction of Government to the

(7th ground II or sub II)

(III)

alienation of the five lands to Bhimabai under the record. ~~XX~~ Plff may, however, urge that sanction of Government ~~to the alienation of the five lands~~ must be given at the time of alienation and Ipso facto sanction cannot avail. Section 5 of the Watan Act is not ~~however~~ however clear on this point but there are rulings under the Watan Act to show that this contention of plff is correct. (Please vide the ruling in Mr. Phadnis's Watan Act V Edn (1936) P.28 under section 5 of the Act). G.R.R.D. Nos. 4791 of 1907 and G.R.R.D. No. 9086 of 1909 have laid down that subsequent sanction will not avail.

With regard to plff's contention that Bhimabai did not become a watandar by virtue of her acquisition of five lands under the award of 1913 for her maintenance, it is necessary to note the ruling of the Bombay High Court - reported in 41 Bom. L.R.P. 924 (Tarabai Shrinivas Naik Vs. Murtacharya Anantacharya) which lays down that "a person who acquires merely watan property, without acquiring the office and without under any obligation to perform service, is not a watandar within the meaning of the Watan Act". Applying this decision to the case of Bhimabai here, she would not become a watandar and the plff's contention would prevail. It is, ~~therefore~~ therefore, necessary to see whether the decision of the High Court in F.A. No. 325/31 would bind the present plff. A question of law even when wrongly decided between the parties operates as res judicata (31 Bom. I.L.R.P. 128, 33 Bom. I.L.R. 479 and 31 Bom. L.R. 778 and 28 Bom. L.R. 879. No doubt, the Government is not bound by that decision, but the decision that Bhimabai is a watandar would certainly bind the present plff who was a party to it. The present plff would be estopped from contending that Bhimabai is not a watandar. The principle of estoppel by record would apply. Government is entitled to accept that previous judgment and accept the position that Bhimabai is ~~not~~ a watandar. Under the circumstances, it would not be open to plff to contend that no sanction of Government was obtained at the time of the alienation of the five lands and the court need not go into that question in this suit.

(b) The next contention of plff is that even assuming that Bhimabai is a watandar she was not a holder of lands held for service (as required by rules 74A and 74 B of the Land Revenue Rules) since she acquired under the will only a limited estate of a widow and did not become an absolute owner of the property given to her under the will made by Bhimaji. Plff further contends that the High Court did not decide the question whether Bhimabai became the absolute owner under the Will and that the view of the Bombay Revenue Tribunal that the High Court held that Bhimabai became the absolute owner of the property bequeathed to her under the will is wrong.

The copy of the will at page 39 of file 1 will show that deceased Bhimaji made Bhimabai (deft 2) the full owner of the properties bequeathed to her. The material portion in the will runs as follows " You should take possession of the said lands and enjoy them in any manner by right of ownership. Neither my daughter-in-law nor my grandson Pralhad have no sort of ownership and connection over the same. Because, the said lands were of your family and though I took them in my possession after litigation they do not form my ancestral family properties. Therefore, I, as owner thereof have made you owner". These words show that - Bhimabai became the full and absolute owner of the properties which she got under the will. The next question is whether Bhimabai is a holder of lands held for service. For this purpose we need not refer to the definition of the expression 'holder' in section 15 of the Watan Act; for, the settlement with Bhimabai is not made by ~~Bhimabai~~ the Collector under the provisions of the Watan Act. The relinquishment was made and accepted under the provisions of sec. 74A & 74B of the Bombay Land Revenue Code (1879). Section 3(11) of the Bombay Land Revenue Code gives the definition of the expression "holder of land" which means to be lawfully in possession of land whether such possession is actual or not. Therefore, it is clear that Bhimabai was an absolute owner and also a holder of the lands in

suit which are held for service. Therefore, she was competent to apply to the Collector for relinquishment of those lands under Rule 74A and 74B of the Bombay Land Revenue Code, read with sec. 76 of it.

(c) The third contention of plff is that the Bombay Revenue Tribunal had no jurisdiction to decide the question whether Bhimabai took the absolute estate or a limited one under the will. The ^{answer} ~~xxxx~~ is that the Tribunal, on the appeal filed by Pralhad, the present plff, had jurisdiction to decide whether Bhimabai was, or was not a holder of the lands held for service within the meaning of rules 74A and 74B of the Land Revenue Rules and whether Bhimabai was competent to relinquish the lands. It may be mentioned here that the Plff Pralhad - contended in his appeal that Bhimabai had only a life interest in the land and that his reversionary interests would be affected by relinquishment. The Tribunal had necessarily to consider the question whether Bhimabai took an absolute or limited estate and whether the reversionary rights of plff would be affected by the action of relinquishment taken by Bhimabai. It would, therefore, appear that the decision of the B.R.T. was within its jurisdiction.

(d) The fourth contention of plff is that rules 74A and 74B of the Land Revenue Rules are contrary to and inconsistent with the fundamental principles of Watan Act and the said rules are not applicable to watan properties and are, therefore, ultra vires. But if we read section 74 and 76 of the Bombay Land Revenue Code it will be clear that even alienated lands wholly or partially exempt from payment of land revenue can be relinquished, subject to the provision of sec. 49 of the Bombay Land Revenue Code which requires that in respect of the lands thus relinquished, no tax larger than the amount of the ordinary assessment shall be made payable. As a matter of fact the lands relinquished in this case are made to bear only ordinary assessment (please vide P. 19 to 39 file I).

(e) Plff further contends that assuming that the Land Revenue Rules 74A and 74B apply to the present case, the mandatory

provisions of those rules have not been complied with. Possibly the plff refers to the last portion of rule 74A viz. "If the land is held hereditarily for service, the application shall be accompanied by consent in writing of all persons who may, at the date of the application, have a present hereditary interest in the land."

The question that arises for consideration, therefore, is, whether Pralhad (plff) can be said to be a person who may at the date of the application for relinquishment given by Bhimabai on 13-11-1941 be said to have a present hereditary interest in the land. In 21 Bom. I.L.R.P. 787 Chinnawa Vs. Bhimangouda) the question as to who is a person having an hereditary interest in a watan, is considered. According to that decision, the expression means a person having a present interest of an hereditary character in the watan, and does not include a person who has a Spes successnis however remote. In this case deceased Bhimabai got the suit lands after the death of Venkatesh and his widow Laxmibai after litigation. The lands thus acquired by deceased Bhimaji became his self-acquired property and did not form the joint family property of Bhimaji and Pralhad (plff). They could be dealt with and were dealt with by Bhimaji in any way he liked. Therefore, Pralhad, plff, could not claim any present interest of a hereditary character in respect of the suit lands. The plff's ^{consent} contention was not at all necessary to the acceptance of relinquishment. Therefore, it may be urged that the provisions of rules 74A and 74B of the land revenue rules have not been contravened at all.

(f). Plff further urges that Bhimabai having only a limited interest in the property in suit had no authority to relinquish it unless there was legal necessity as required by the principles of Hindu Law. It is already shown that Bhimabai's interest under the will was that of an absolute owner and her rights to the land were unrestricted. Assuming but not admitting that she had held only a life estate in the suit lands, it appears from her application and statements (P.1-3 and P.31 of file I) that she was indebted to the extent of 4 thousand rupees and unless she sold some of these lands in suit she was not in

position to pay off the debts. She could not have sold the lands in suit unless they were converted into ryotwari lands. Therefore, Bhimabai's application for relinquishment appears to be bona fide and justified. No doubt, Bhimabai was in ~~possession~~ possession of 240 acres of land and it might not be necessary to sell away all those lands (please vide the report of the Jamlatdar, dated 14-2-1942 P.99-101 file I), and unless she sold some at least which she could not do without relinquishing, she could not have paid off her debts. The real question in this case is, whether the relinquishment is legal and proper and not whether how many of her lands it was necessary for her to sell or pay off her debts.

(g). Plff proceeds to contend that Bhimabai (deft 2) had committed fraud on the revenue authorities in the matter of relinquishment. The fraud consisted of her alleging in her application for relinquishment that she was indebted heavily and without getting the lands converted into ryotwari lands, she was not in a position to pay off her debts. As a matter of fact after the relinquishment was accepted, she made a gift of 99 acres and 26 gunthas and sold 6 acres and did not pay off Tagai loans. So far this contention of plff is concerned, it appears to be ~~irrelevant~~ irrelevant. The L.R. rules 74A and 74B do not require the applicant to state the object and purpose for which she or he wants to relinquish the lands. Moreover, if Bhimabai owed ~~genuine~~ genuine debts at the time of her application, her subsequent conduct in making the gift etc. is really beside the point ~~and~~ and Government is not concerned with her subsequent conduct.

(II) Misjoinder of causes of action and debts:- It may be contended that the suit is bad on account of misjoinder of causes of action and debts. The cause of action against Govt., is really different from the cause of action against deft NO.3 donee of certain suit lands. Defts 4,5 and 6 are transferees of a portion of suit lands.

For all these reasons, it should be urged that the plff's suit should be dismissed with costs.

Draft Written Statement.

1. The suit is bad for want of proper notice under section 80 C.P.C. The plaint does not contain an averment as to the method of service of notice.
2. The suit is bad for misjoinder of causes ^{of} (and) ^{and} action of debts.
3. The allegation in para 1 of the plaint regarding the description of the lands in suit as kulkarniki watan lands is denied. It is true that they were originally such watan lands, but they are now ordinary ^{ryotwari} (watan) lands as a result of relinquishment thereof by deft 2 in favour of this deft and their conversion under the provisions and rules of the Land Revenue Code and orders of regrant made.
4. The allegation ^{is} in para ² of the plaint that Bhimabai was not a watandar and had no interest in the suit lands and (the allegations) that she took only a life interest in the suit lands under the will of Bhimaji are denied. [The other allegations are correct.]
5. The allegations in para 3 of the plaint regarding the extent of interest Bhimabai took in the suit lands are denied.
6. The deft asserts that Bhimabai became an absolute owner of all suit lands by virtue of the will made by the deceased Bhimaji. In F.A.No. ³²¹ 375/1935 of the High Court and ~~decreed~~ her claim for possession of all the suit ^{was decreed & she obtained possession of them in 1938.} lands against this plff. She was a watandar and holder of the lands held for service and was competent to relinquish them under the Land Revenue Rules.
7. In 1941 Bhimabai deft No.2, after obtaining ~~xxxxxx~~ possession of the suit lands under the decree of the High Court from the plff, applied to the Collector of Dharwar for relinquishment of the said lands. The Collector, after careful inquiry, accepted the relinquishment and regranted them to deft 2 on ordinary ryotwari tenure. The action

taken by the Collector under Rule 74A and 74B of the Land Revenue ~~Ends~~ rules read with section 74 and 76 of the Bombay Land Revenue Code, is legal, justified and intra vires. (In (7) view of the decisions of the Bombay High Court appeal No. ³²¹325 of 1935 which ~~def~~ this deft accepts, the plff is estopped from contending either that Bhimabai was not a watandar or that she did not have absolute estate under the will of the deceased Bhimaji *he is bound by Res judicata.*

8. The contentions in para 5 (a to g) of the plaint that the order of ~~the~~ the Bombay Revenue Tribunal is ~~i~~ ultra vires, illegal and null and void are denied. The grounds mentioned in ~~those~~ ^{these} para ⁵(a to g) on which ~~contentions~~ are based, are equally untenable ~~are~~, therefore, denied. It is asserted that Bhimabai was a watandar of Navalgund kulkarniki watan; that she was a holder of the lands held for service and that she was an ~~absolute~~ absolute owner of all suits by virtue of the will of the deceased Bhimaji and that she was competent to apply for relinquishment of those lands. Her application for relinquishment was legal, proper and justified and her relinquishment was duly, legally and properly accepted by the deft. The Bombay Revenue Tribunal ^{acted} ~~accepted~~ within its jurisdiction and the allegations to the ~~entirely~~ contrary are denied.

9. The allegations that Bhimabai (deft 2) had no legal necessity to relinquish and committed fraud in relinquishment, are irrelevant and the question of such necessity and subsequent fraud could not arise for consideration under the rules of relinquishment.

10. The revenue rules of relinquishment are not ^{ultra} ~~intra~~ vires and are not inconsistent and are not opposed to the fundamental principles of the Watan Act as alleged. The said rules have been ~~completely~~ completely complied with.

11. The allegations in paras 6, 7 and 8 are not admitted.

12. It is submitted, therefore, that the plff's suit - should be dismissed with costs.

Page 78-

Insert the following at the end of Chapter XII:-

To

Sir,
your
rel
int

"74-A-(1). Subject to the provisions of sections 74 and 76 of the Bombay Land Revenue Code, 1879 (Bombay. V of 1879), the holder or holders of any land held for service intending to relinquish the same or any part thereof, that is, to resign or surrender it in favour of Govt., shall make an application to the Collector of the District in which such land or part thereof is situate. Such application shall be in writing and shall be signed by the holder or, if there are joint holders, by all such joint holders. If the land is held hereditarily for service, the application shall be accompanied by the consent ⁱⁿ writing of all persons who may, at the date of the application, have ^a present hereditary interest in the land.

"(2) If the holder or any of the joint holders or any person having the present hereditary interest is affected with a legal disability, the application or consent, as the case may be, shall be signed by his legal representative entitled to act or enter into contracts on his behalf.

"74-B. On the receipt of such application, the Collector may, after holding an inquiry himself or causing such inquiry to be held by an officer not lower in rank than a Mamlatdar or Mahalkari, and on being satisfied that the requirements of sub-rule (1) have been duly complied with, direct that the land shall, subject to any rights, tenures, incumbrances or equities (other than those of Government, the ~~applicant~~ applicant and any other person consenting to the ^{lawfully subsisting in favour of any person, be entered in Government} relinquishment) ~~law~~ records as unalienated unoccupied land, and the land shall thereupon cease to be land held for service. The Collector may, subject to such orders as may be passed by the Commissioner in this behalf, grant permission to occupy the said land or any portion thereof to any person who made or consented to the relinquishment on such terms and conditions as he thinks fit."

(G.R., R.D., No. 9712 of 6th April 1936.)

41 Bond R. 1934
Tarehai Ghimins Nalk
Guthal vs. Mumbaicharya Anantacharya
A person who merely acquiesces with the
with acquiescing the Govt. without being under any obligation to
in law, service, is not a Mamlatdar within the meaning of the W.T. Act.

113

Lands held for service. Rules for
surrender of - by holders and its accep-
tance by Government.

Government of Bombay
Revenue Department.
Resolution No. 9712/28
Bombay Castle 6th April 1936.

23

X

E

Letter from the Commissioner, S.D. (Mr. H.N. Clayton, CIE., ICS.,
No. WTN. 614 dated the 8th February 1936.

"With reference to paragraph 2 of Govt. Resolution No. 9712/28
of 30th August 1935, I have the honour to state that no peti-
tions of objections were received by me or the officers
subordinate to me in respect of the rules:-

2. I submit herewith a copy of a letter, * No. WTN. 1841
of 18th December 1935, from the Collector of Belgaum on the
subject and would remark that I agree with Mr. Hiremath that
it should not be necessary for the Collector to make a
reference to the Commissioner in every case before giving
out the land. As I interpret the draft rules, however this is
not their intention and the clause 'subject to such orders as
may be passed by the Commissioner in this behalf' is
intended ~~as~~ only to preserve the general supervisory power
of the Commissioner and that, therefore no change in the draft
rules is necessary."

Resolution: Government agree with the Commissioner, S.D. that the
last sentence of No. 2 of the rules does not mean that the
Collector has to obtain the sanction of the Commissioner in
every case before giving out the surrendered land, but it is
only intended to preserve the general supervisory powers
of the Commissioner.

2. No objections have been received in respect to draft
rules for surrender of lands held for service by holders and
its acceptance by Government which were provisionally publis-
hed in Government notification No. 9712/28 dated 30th August
1935. The rules should, therefore be published finally in
part IV-A of the Bombay Government Gazette.

3. The Oriental Translator to Government should be
requested to translate the rules into Marathi, Gujarathi and
Kanarese and to forward the translations to the Superintendent
Government Printing and Stationery for being printed and
supplied to the officers concerned on indent.

4. Three copies of the notification should be forwarded
to the Government of India, Department of Education, Health
and Lands, and four copies should be supplied to the India
Office.

5. The cost of printing the vernacular translations
should be debited to "5-Land Revenue" for purposes of the
press pro forma accounts.

6. Government agrees with the view expressed by the
Commissioners in paragraph 2(c) of their joint letter No. WTN.
614 dated 4th September 1934 that it is not necessary for
Government to pay anything to the holder by way of capitalised
value of the naksan. The question of the levy or non levy
of a nazarana to be paid to Government by the holder as well
as the question of its amount should be left entirely to the
discretion of the Collector as suggested by the Commissioners.

By order of the Governor in Council.

Sd. N.A. Faruqi.

Offg. Under Secretary to Govt

*Accompaniment to Government Resolution Revenue Department
No. number 9712/28 dated the 6th April 1936.

Letter from the Collector Belgaum (Mr. S. S. Hiremath) No. WTN.
1841 dated the 18th December 1935 to the Commissioner, S.D.

With reference to your memorandum No.WTN.614 dated the 3rd October 1935 on the subject noted above, I have the honour to report that no petitions of objections or suggestions have so far been received in respect of the said draft rules.

However the following suggestion occurs to me. In the last ~~xxxx~~ sentence of paragraph 2 of the draft ~~at~~ rule it is said "The Collector may, subject to such orders as may be passed by the Commission ~~in~~ this behalf, grant permission to occupy the land, etc," In my opinion it should not be necessary under the rule that the orders of the Collector in each and every case of grant of permission by him, however ~~be~~ simple it may be, should be subject to the orders that may be passed by the Commissioner. For example, in simple cases of relinquishment of service lands, including cases of service inam lands (the right of service in which cases has already been commuted) the Collector's orders need not be subject to the previous sanction or approval of the Commissioner. Such a saving clause will save the time and labour of both the Collector and Commissioner,. The order passed by the Collector will ordinarily be subject to appeal to the Commissioner. It is only in complicated cases the nature of which may be defined in the rules, that the Collector's orders should be subject to the previous sanction or approval of the Commissioner.

Lands for service.
Rules for surrender of - by holder
and its acceptance by Government.

Government of Bombay.
Revenue Dept.
Resolution No.9712/28
Bombay Castle 21st July 1939.

Resolution of Government.

In modification of G.R.No.9712/28 dated 4th May 1939, Government is pleased to direct that the words "on ordinary ~~xxxxxx~~ ryotwari tenure" should be substituted for the words "on new tenure" occurring in the said resolution.

By order of the Governor of Bombay
Sd.V.Shankar.
Under Secretary to Government

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27

Notice under Section 80 of the Civil Procedure Code.

To

The Collector,

Dharwar.

From

Prilhad Kalaso Kulkarni of Navalgund.

Sir,

I ~~xxx~~ hereby beg to give you notice, as required by section 80 of the Civil Procedure Code of the suit which I propose to file against the Province of Bombay. All the particulars as required by law are given in the draft of the plaint which is sent herewith.

Navalgund,

Yours faithfully,

10th May
April 1943.

P. K. Kulkarni

W.T.N. Key
APR 28 1943

MAY 12 1943

Returned with compliments for want
of Signature.

5/5/43. 9th
Kulkarni

23
29

In the Court of the First Class Sub-Judge,
At Dharwar.

Plaintiff :- Pralhad Kalso Kulkarni, caste Brahmin, age 29,
Occupation Watani vahivat, of Navalgund.

VERSUS

- Defendants:- 1. The Province Of Bombay.
2. Bhimabai Bhratar Ganapatrao Kulkarni,
Caste Brahmin, age 63, occupation House
hold work, of Navalgund.
3. Shamacharya Krishtacharya Rotti, age 9
minor by his guardian ad litem mother
Rukminibai Bhratar Kristacharya Rotti,
Caste Brahmin, age 35, occupation househol
work of Navalgund.
4. Dod-^{Bhimappa}~~Hannappa~~ age } ^{Hannappa}~~Rappa~~ Bajantri,
5. Sanna-^{Bhimappa}~~Hannappa~~ }
Agriculturist of
Navalgund.

Claim Rs.

Plaintiff begs to state and submit as follows :-

1. The property in suit is as follows:-

Lands situated at Navalgund as detailed below:-

	R.S	Acreage.	Assessment.	Judi.	Approximate valuation..
1.	101	26-2	44-0-0	34-14-0	Rs. 2500/-
2.	104	25-28	47-0-0	37-5-0	Rs. 2500/-
3.	186	3-7	1-8-0	1-3-0	Rs. 400/-
4. ~~180~~	190	1-21	2-8-0	2-0-0	Rs. 150/-.
5.	366/2	7-26	12-9-0	10-0-0	Rs. 800/-.
6.	369	18-34	31-0-0.	24-9-0	Rs. 1800/--
7.	416	22-16	42-0-0	33-4-0	Rs.2200/-.
8.	438	17-6	34-0-0	26-15-0	Rs. 1800/-.
9.	439	7-13	14-0-0	11- 2-0	Rs. 800/-.

All the above lands are Kulkarni Watan lands in which deft 2, Bhimabai, has only a limited estate, viz., the limited estate of a Hindu widow.

2. The aforesaid lands originally belonged to Ganapatrao Kulkarni the deceased Husband of defendant 2. After his death defendant 2 adopted one Venkatesh, who died in 1918. After the death of the said Venkatesh, Bhimaji the grandfather of plff took possession of all the suit lands as the next reversioner entitled to the said lands. Defendant ~~had~~^{XXX} 2 had no interest in the said lands as she was not a watandar. The said Bhimaji died on 3-3-25 But before his death he made a will on 24-2-1925 purporting to bequeath a Hindu widow's limited interest in the said lands to Bhimabai.

3. Bhimabai filed Special suit No. 107/1925 in this Court against plaintiff for possession of the suit lands basing her ~~xx~~ title on the will made by ~~Bhimaji~~. The suit was ultimately decided ~~in her favour~~ by the High Court in 1937 (22-12-37). The only question ~~question~~ considered and decided by the High Court was as to whether Bhimabai defendant 2 was a watandar in whose favour a valid bequest could be made. The High Court decided that she was a watandar and upheld her claim. The question as what interest defendant 2 took in the property under the will i.e., whether her interest in the properties was an absolute ownership or whether it was the limited estate of a Hindu widow, was not before the Court and no decision was given thereon.

4. Defendant 2 in pursuance of the decree of the High Court took possession of the properties in 1938. In 1942 defendant 2 made an application for conversion of the suit lands into ryotwari or Sarakari lands. The plaintiff objected to her application but his objection was overruled. The matter was taken to the Revenue Tribunal which also decided in favour of defendant 2 on 9-9-1942.

5. It is submitted that the order of the Revenue Tribunal is ultra vires & illegal and null and void on the following among other reasons :-

- a). Government was not a party to the suit filed by defendant 2 against plff. The question decided therein is not binding as between the plaintiff and the Government. The decision of the High Court that defendant 2 was a watandar is wrong as being contrary to the provisions of section 5 of the Watan Act. After the death of Venkatesh in 1918 defendant 2, as his mother, could not inherit the watan and her possession of some other lands given to her by way of maintenance under an award decree was not ~~the~~ legal possession and could not constitute her a watandar. There was no sanction by Government for the alienation so as to render it valid after the death of Venkatesh. Hence the very basis for the relinquishment proceedings started by defendant 2 falls through and therefore the whole proceeding is void ab initio.
- b). Assuming without admitting that deft 2 is a watandar it is submitted that defendant 2 is not a holder of lands held for service, since defendant 2 took only a limited interest in the suit lands under the will of Bhimaji. The High Court has not considered what interest defendant No.2 took in the suit lands under the said will. The interpretation of the will was not the subject of decision as it was not necessary for the disposal of the suit. The Revenue Tribunal erred in assuming that the High Court had decided that defendant 2 took an absolute interest in the suit lands under the will. Defendant 2 not being the holder in the sense of being a full owner of the the lands had no right to apply for relinquishment. A proper construction of the will would show that defendant 2, Bhimabai, could take, and has taken only a limited estate in the suit lands, namely the limited Estate of a Hindu widow.

- c). The Revenue Tribunal and the Revenue Authorities had no ~~jurisdiction~~ jurisdiction to decide as to whether defendant 2 took an absolute estate or only a limited estate in the suit lands under the will. That was a matter exclusively for the Civil Court. The revenue Authorities having assumed jurisdiction not vested in them by any provision of law, the orders passed are absolutely nullities.
- d). Rules 74A and 74B of the Land Revenue ~~Rules~~ Rules are contrary to and inconsistent with the fundamental principles and the provisions of the Watan Act. The said rules are not, therefore, applicable to the watan properties and to that extent they are ultra vires
- e). Assuming without admitting that the said rules are applicable to watan property it is submitted that the mandatory provisions thereof have not been complied with and on this ground also the proceedings of the Revenue Authorities are void. .-----
- f). Defendant 2 being entitled only to a limited interest in the suit lands, had no authority to relinquish the said lands unless there was legal necessity or justification for doing so. Even under principles of Hindu Law her action is illegal and the order of the Revenue Authorities cannot render it valid and binding on the plaintiff.
- g). Defendant 2 has committed a gross fraud on the Revenue Authorities. In her application she represented that she had incurred debts ~~and~~ for the litigation and that it was absolutely necessary to convert the lands into Sarakari lands so as to enable her to dispose thereof and pay off the ~~the~~ debts. But immediately after the order of the Collector defendant 2 has made a gift of 99 acres of lands and has sold 6 acres. She has not even paid off the Tagai loan which she had taken from the Government. The conduct of defendant 2 is a clear indication of the fraud contemplated and actually committed by

her. Defendant cannot in law be allowed to take advantage of her fraudulent conduct to the prejudice of plaintiff.

6. In view of the above-stated grounds and on other various grounds it is submitted that the order of the Revenue ~~Authority~~ Tribunal is ultra vires and not binding on the plaintiff. Plaintiff is the grandson of Bhimaji and is the next reversioner entitled to inherit the properties after the lifetime of defendant 2. In order to safeguard his own reversionary interests it has become necessary to file this suit for a declaration that the order of the Revenue Tribunal is ultra vires and not binding on plaintiff after the life time of defendant 2 and for consequential relief.

7. Defendant 3 is the donee under a gift-deed (27-5-1942) executed by defendant 2. Defendants 4 and 5 have taken a sale deed (in March 1943) in respect of some of the suit lands from defendant 2. Both the gift and the sale are invalid in view of the order of the Revenue Tribunal being ultra vires and the said alienations cannot have any ~~validity~~ validity beyond the life time of defendant.

8. The cause of action accrued when the ~~Revenue~~ decision ~~Tribunal~~ of the Revenue Tribunal was communicated to the plaintiff i.e. in October 1942.

9. Plaintiff prays as follows :-

1. Be it declared that the order of the Revenue Tribunal is ultra vires and null and void and not binding on plaintiff.
2. Be it declared that the alienations by defendant 2 in favour of defendants 3 to 5 are void after the life time of defendant 2.
3. All costs of the suit be awarded.
4. Any other reliefs to which plaintiff may be entitled in law, equity and justice be awarded.

24th April 1943.

10th May 1943

P. K. Kulkarni

IN THE COURT OF THE FIRST CLASS SUB-JUDGE,
AT DHARWAR.

L. C. Suit No.305 of 1943.

Pralhad Kalso Kulkarni of Navalgund
Taluka Do. ... Plaintiff;

Vs.

The Province of Bombay and 6 Others Defendants.

Written statement of the defendant No.1 herein
is as follows:-

1. The suit is bad for want of proper notice under section 80 of the Civil Procedure Code. The plaint does not contain an averment as to the method of service of notice.

2. The suit is barred under section 4 of the Revenue Jurisdiction Act.

[3. The suit is bad for misjoinder of cause of action and of defendants.]

4. The allegation in paragraph 1 of the plaint regarding the description of the lands in suit as kulkarniki watan lands is denied. It is true that they were originally such watan lands, but they are now ordinary ryotwari lands as a result of relinquishment thereof by defendant 2 in favour of this defendant and their conversion under the provisions and rules of the Land Revenue Code and orders of regrant made.

5. The allegations in paragraphs 1 and 2 of the plaint that Bhimabai was not a watandar and had no interest in the suit lands and that she took only a life interest in the suit lands under the will of Bhimaji are denied.

6. The allegations in paragraph 3 of the plaint regarding the extent of interest Bhimabai took in the suit lands are denied.

7. The defendant asserts that Bhimabai became an absolute owner of all suit lands by virtue of the will made by the deceased Bhimaji. In First Appeal No.321/1935 of the High Court her claim for possession of all the suit lands against this plaintiff was decreed and she obtained possession

of them in 1938. She was a watandar and holder of ~~the~~ lands held for service and was competent to relinquish them under the Land Revenue Rules.

8. In 1941 Bhimabai defendant No.2, after obtaining possession of the suit lands under the decree of the High Court from the plaintiff, applied to the Collector of Dharwar for relinquishment of the said lands. The Collector, after careful inquiry, accepted the relinquishment and regranted them to defendant 2 on ordinary ryotwari tenure. The action taken by the Collector under Rule 74A and 74B of the Land Revenue Rules read with section 74 and 76 of the Bombay Land Revenue Code, is legal, justified and intra vires. In view of the decision of the Bombay High Court appeal No.321 of 1935 which this defendant accepts, the plaintiff is estopped from contending either that Bhimabai was not a watandar or that she did not have absolute estate under the will of the deceased Bhimaji and he is barred by Resjudicata.

9. Plaintiff's contentions in paragraph 5 (a to g) of plaint are not correct and are denied. They are also not tenable and are barred by estoppel and resjudicata. This defendant states that Bhimabai was a watandar, that she took an absolute estate under the will of Bhimaji, that she was a holder of lands held for service, that she was competent to apply for relinquishment, that rules 74A and 74B are valid and that the provisions of the rules were properly followed. This defendant further states that the orders passed by the Revenue Authorities and the Bombay Revenue Tribunal are valid and legal and are binding on plaintiff. Defendant contends that plaintiff is not competent to challenge their legality.

10. The allegations that Bhimabai (defendant 2) had no legal necessity to relinquish and committed fraud in relinquishment, are irrelevant and the question of such necessity and subsequent fraud could not arise for consideration under the rules of relinquishment.

11. The revenue rules of relinquishment are not ultra vires and are not inconsistent and are not opposed to the fundamental principles of the Watan Act as alleged. The said rules have been completely complied with.

JH 31

12. The allegations in paragraphs 6, 7 and 8 are not admitted.

13. The plaintiff is not entitled to any relief and the suit should be dismissed ^{with} for a separate set of costs in favour of the defendant.

District Government Pleader, Dharwar.

I District Government Pleader,
Dharwar, do hereby declare that what is stated in paragraphs
1 to 13 above is true according to the information received and
believed to be true. This verification is made at
this day of 1944.

District Government Pleader, Dharwar.

S.

47

Suits.

Dharwar.

For a declaration that the order of the Bombay Revenue Tribunal, No. 0/242, dated the 9th September 1942, is *ultra vires*; and that alienations made by defendant No. 2 in favour of defendants Nos. 3-5 are void.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 3042. ✓

Bombay Castle, 22nd April 1944.

Letter from the Collector of Dharwar, No. L.A.W. 432, dated the 29th December

IN THE COURT OF THE FIRST CLASS SUB-JUDGE, DHARWAR. 1943—Forwarding papers in Civil Suit No. 305 of 1943.

Prahlad Kalso Kulkarni of Navalgund ..	.. Plaintiff;	the suit noted in the margin;
The Province of Bombay and 6 others ..	.. Defendants.	and requesting sanction to its

Claim—Rs. 400. defence.

Endorsement by the Commissioner, Southern Division, No. L.S.T. 297, dated the 10th January 1944—Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, Dharwar, No. 3041, dated the 22nd April 1944—Forwarding a copy of the brief with its accompaniments in advance.

MO-III Leg H 11—1

Resolution.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. N. Moos

P. N. MOOS,
Secretary to Government.

G. R., No. 3042, L. D., dated the 22nd April 1944.

To

*The Revenue Department,
*The Commissioner, Southern Division,
*The Collector of Dharwar,
The District Government Pleader, Dharwar (with two copies of the brief).

*With a copy of the brief.

No. of 1944.

Copy forwarded for information and guidance to

Subdt after issue .

2 File .

*Agc
17/4*

A.P.A.

16/6

Chronological Statement of Facts.

This suit relates to the Kulkarni watan of Navalgund in Dharwar District. Ganpatrao and Bhimaji were near relations and the watan lands were divided between them in two equal portions. The 9 suit lands and 5 others were Ganpatrao's portion. He died in 1893 and the defendant No. 2 succeeded him as his widow and heir. In 1912, she adopted Venkatesh as her son. There were disputes between them which were referred to arbitration in 1913. Defendant No. 2's claim was that there had been an agreement between them which entitled her to retain possession of the watan property till her death. The arbitrator awarded her 5 lands (other than those in suit) for her maintenance for life. Venkatesh died in 1918 and was followed a few months afterwards by his widow.

2. According to the law then existing under Act V of 1886 Venkatesh's estate devolved upon Bhimaji. In 1921, Bhimaji applied for restoration of the 5 lands awarded to defendant No. 2 by the arbitrator, but the application was rejected by Government by Government Resolution No. 566 of 1st September 1921. Bhimaji died in 1925 leaving a will by which he devised the suit lands to defendant No. 2.

3. Defendant No. 2 filed Suit No. 187 of 1925 against the present plaintiff who is grandson of Bhimaji for possession of the 9 suit lands on the strength of the will. The suit was defended on the ground that the present defendant No. 2 was not a wantandar of the same watan and that therefore Bhimaji was not competent to devise watan property to her by will. This defence was rejected and the suit decreed by the High Court on 22nd December 1937 in First Appeal No. 321 of 1935. In execution proceedings defendant No. 2 obtained possession from the present plaintiff on 23rd May 1938.

4. On 13th November 1941, defendant No. 2 applied for conversion of the suit lands into ryotwari lands. She stated in the application that she had incurred debts of Rs. 3,000 or Rs. 4,000 on account of the litigation, that she also owed Tagai loan of Rs. 1,100 obtained from Government for improvement of lands, that the lands were full of weeds and no tenant was willing to take them, and that she would be unable to pay even Government assessment in their present condition. On 7th January 1942, plaintiff objected to the conversion in his statement before the Mamlatdar. On 31st January 1942, defendant No. 2 gave a written notice of relinquishment in the form "L" under rule 74 and section 74 of the Land Revenue Rules and Code, respectively. The notice was duly attested by two witnesses. On 11th March 1942, the Collector accepted the relinquishment. On 15th May 1942, the Collector acting under rule 2 of the rules published in Government Resolution, Revenue Department, No. 9712/28 of 6th April 1936 read with Government Resolution, Revenue Department bearing the same number, dated 21st July 1939, directed restoration of the relinquished land to defendant No. 2 on the ordinary ryotwari tenure.

5. On 7th May 1942, plaintiff preferred an appeal to the Bombay Revenue Tribunal from the Collector's order, dated 11th March 1942. The appeal was dismissed on 9th September 1942.

6. On 10th May 1943, plaintiff gave notice of suit under section 80 of the Civil Procedure Code and filed this suit on 16th July 1943 for the following reliefs—(1) declare that the order of the Tribunal is *ultra vires*, null and void and not binding on plaintiff and his reverendary interests; (2) declare that the alienations made by defendant No. 2 in favour of defendants Nos. 3 to 5 are void after the life-time of defendant No. 2; and (3) costs and other equitable reliefs.

show of reason be said to be necessary or proper party. And if no decree is not immune from attack from within, in this manner, judicial adjudication will lose its importance; and the result will be that titles based on decrees and the legal system itself will be thrown in a state of unsettlement, uncertainty, and confusion.

4. Assuming for a moment that it is permissible to the plaintiff to raise the plea afresh, the position is as follows:—The judgment of the High Court, as declaratory of the law, is of binding authority on all inferior Courts, and on Courts of co-ordinate jurisdiction (*see Pudma Coomari Debi v. The Court of Wards*, 8 Cal. 302 P. C. at p. 308). It can only be overruled by a Full Bench or the Privy Council. Moreover, no cogent reasons are advanced to show why that judgment was wrong.

5. The High Court held that defendant No. 2 was a watandar as she held 5 watan lands under the award. The plaintiff's plea seems to be that by virtue of section 5 of the Watan Act the award to which Government's previous sanction was not obtained, could not have effect so as to rest in defendant No. 2 an interest in the said lands which would endure beyond the life-time of Venkatesh. This plea can be met on the grounds stated in the High Court's Judgment as also on the following grounds:—In the first place it is far from clear that section 5 applies to the facts. The section in so far as it is relevant declares that without the sanction of Government it shall not be competent to a watandar to alienate, for a period beyond his natural life, any watan property. Having regard to its terms, the section merely restricts the right of the watandar to alienate the property, but does not attach to the property itself a legal incident so as to render a non-watandar incapable in law of holding it. The section moreover deals with an alienation to be made by the watandar, and in *Radhabai v. Anantrao*, I.L.R. 9 Bom. 198 F. B. it has been held that the alienation here contemplated is an act on the part of the watandar and not mere passive lying by. In the light of the principle thus established, it follows that the section in its plain meaning does not apply where the watandar merely submits to a decree or award in yielding possession of the property inasmuch as if the watandar did not so submit, the decree or award would be enforceable by law, so that his act is merely involuntary. This view finds support from the fact that sections 8–11 depart radically from the language of section 5; they do not speak of alienations of the watandar, but deal with all cases where the property has "passed into the beneficial possession" of outsiders, whether by alienations of the watandar or otherwise.

It is true that mortgage decrees have been held to be affected by section 5 (*see cases cited by Phadnis at p. 41*). That is because such a decree deals with the *property mortgaged by the Watandar*, and in determining the extent of that property, section 5 applies directly. Unless Government's sanction is obtained, the mortgage is by reason of that section void as against the watandar's heirs, and can only affect the property during his life-time.

It can be argued, therefore, that section 5 has no application to the facts of this case, because Venkatesh in yielding possession of the lands to defendant No. 2 merely obeyed the award and did not voluntarily alienate those lands.

Secondly, on the assumption that section 5 does apply, the position is as follows:—The section does not in terms require *previous* sanction of Government. The section is a restrictive enactment and cannot be construed to impose greater restrictions than it expressly says. The terms of the section may doubtless appear to contemplate antecedent sanction being given by it, but it is equally clear that they would be satisfied by subsequent sanction: *see observations of Lord Mearns in Dvarka Nath Singh v. Mussamat Raj Rani*, (1937) 64 I. A. 268, at p. 278, upon the construction of section 34 of the U. P. Court of Wards Act which provided that a ward shall not be competent to transfer his property, or to dispose of his property by will without the consent

of the Court of Wards. It should also be pointed out that whenever the Legislature intends to prescribe previous sanction it says so in terms: cf. section 8 of the Bombay Primary Education Act, 1923, and section 48 (2) of the Bombay Municipal Boroughs Act; and that when it designed to dispense with the requirement as to previous sanction under section 8 of the Primary Education Act, it did so merely by omitting the word "previous". The plaintiff may rely on an observation to the contrary effect in Phadnis' Watan Act, which appears to be based upon 2 Government Resolutions. The Government Resolutions however do not support the statement, nor can they lay down the law for the Courts. They merely apply sections 5 and 11 to the facts of certain cases before passing the appropriate orders. But the following passage in Government Resolution No. 9086, dated 20th September 1909, seems to be a fair statement of both law and practice:—"The alienor in this case is alive and it appears probable that the alienation does not become illegal until the death of the alienor. It is not usually considered advisable to interfere with such alienations until the death of the alienor and then only on application by the alienor's heirs" (Phadnis, page 172). And as pointed out by the High Court's judgment, the property passed into the possession of defendant No. 2 with the consent of the Collector, and the "alienation" appears to have been recognised by Government. It cannot therefore be said to contravene section 5.

Moreover, as the property passed into the possession of defendant No. 2 with the consent of the Collector the High Court held that it was not competent to the revenue authorities to challenge her right under section 9 or otherwise, and that it is equally incompetent for any one else to do so. It may be pointed out that if the plaintiff were to file a suit for a declaration that the award did not operate to vest in the plaintiff any interest which endured beyond the life-time of Venkatesh, the suit would be barred by limitation. For these reasons the first contention advanced by the plaintiff is untenable.

6. The second contention that under Bhimaji's will defendant No. 2 only took a life interest, is likewise untenable. It cannot be disputed that if the intention be clearly expressed or necessarily implied in the terms of the will, an absolute estate can be conferred on a Hindu widow: see *Sureshmani v. Rabinath Ojha*, (1907) 35 I. A. 17; *Bhaidas Shivdas v. Bai Gulab*, (1921) 49 I. A. 1 at p. 7. In the will Bhimaji begins by saying that his wife and only son had died several years previously, that his son's widow and grandson the present plaintiff had left him, and that therefore he was living with and was looked after affectionately by the present defendant No. 2. He then states that lands belonging to her had passed into the possession of Venkatesh, and that after the latter's death he the testator himself had "after carrying on disputes" with her obtained possession of the same. He proceeds to say that on account of her nursing of him "there arose a desire that you should be the owner of the property" and "that I should immediately execute a deed in favour of yourself in respect of the property which has been settled to be given to you as stated above". He then states "by this deed you have become after my death owner of below mentioned lands.... I have executed this deed with the intention that after my death you should alone become owner of all the above lands. After my death you should take the said lands in your possession and enjoy the same as you like as owner. Neither my daughter-in-law nor my grandson Prhlad (plaintiff) has any right, title or interest over that, the reason being that the said lands belonged to your family and though I took them into my possession by carrying on litigation, they were not my ancestral property. Therefore I have transferred them to you as owner, in my right as owner". There could not have been a clearer expression of an intention to bequeath an absolute title to the defendant No. 2. The plaintiff's contention must therefore be rejected.

Grounds of Defence.

Jurisdiction.—The reliefs for which the plaintiff prays are thus expressed : (1) declare that the order of the Revenue Tribunal is *ultra vires* and null and void ; (2) declare that the alienations by defendant No. 2 in favour of defendants Nos. 3 to 5 are void after the life-time of defendant No. 2. It should, however, be clear that what the plaintiff really wants is a declaration that the Collector's order of 11th March 1942 permitting defendant No. 2 to relinquish the suit lands and re-granting them to her on the ryotwari tenure is illegal. The suit is therefore barred under section 4 of the Bombay Revenue Jurisdiction Act, 1876.

Paragraph 1 of clause (a) of the section bars the Court's jurisdiction to entertain a claim against the Crown relating to any property appertaining to the office of a hereditary village officer ; and by paragraph 3, its jurisdiction is barred in respect of such claims relating to land declared to be held for service. The present suit makes a claim against the Crown in that the declaration in paragraph (1) negatives the right of the Crown to levy the full assessment levied on the suit lands, and the plaintiff evidently wants that the decree should bind Government. The basis of the claim is that the lands are watan property, i.e., of the nature described in paragraphs 1 and 3. The circumstance that they have now been converted into ryotwari lands is immaterial. The expression "claim to property appertaining to the office of a village officer" *prima facie* connotes a claim made on the basis that it is such property. This view is reinforced by the provisions of Order VII, rule 11 (d), Civil Procedure Code, 1908, which is mandatory and requires the Court to reject a plaint where *from the statements made therein* the suit appears to be barred by any law.

Alternatively the suit is barred under paragraph 3 of the said clause, as the effect of the decree prayed for would be to nullify the order accepting relinquishment of the watan lands, which was made under rules 74A and 74B, which may properly be said to be a law "on the same subject" within the meaning of that expression in paragraph 3. The order is *intra vires*.

The District Government Pleader's attention is invited to *Khangowda v. Secretary of State*, 38 Bom.L.R. 1308, and *Mallappa v. Tukko*, 39 Bom.L.R. 288, wherein the effect of these provisions is explained.

2. **Merits.**—The plaintiff's contentions may be briefly stated as follows :—

(1) Defendant No. 2 was not a watandar of the same watan as the testator and by virtue of section 5 of the Watan Act the will was ineffective to confer upon her any interest in the watan property.

(2) Moreover, under the will she could only take a life interest. Consequently, she was not a holder of the watan property and was incompetent to relinquish it.

(3) Moreover, rules 74A and 74B of the Bom.L.R. Rules, 1921, are *ultra vires* as being contrary to the principles of the Watan Act.

(4) The relinquishment, and the regrant of the land on ryotwari tenure have therefore no legal effect. The lands continue to be watan land.

(5) The alienations made by defendant No. 2 of parts of the said lands beyond the period of her life—

(i) by the operation of section 5 of the Watan Act ;

(ii) because being a Hindu widow merely holding a widow's estate, she could not in the absence of legal necessity, so alienate the property.

In this suit Government is not concerned with the dispute as to the property rights between the plaintiff on the one hand and defendants Nos. 2 to 4 on the other. It is, however, interested in supporting the validity of the orders passed by Government officers ; accordingly it is necessary to examine the contentions 1-4 above.

3. The first contention was raised by the plaintiff in the litigation of 1925 and was rejected by the High Court. It is now barred as *res judicata*. The plaintiff appears to urge that the contention is not barred as Government was not a party to the former suit but is a party to the present suit. The plea can rest only on the circumstance that section 11 of the Civil Procedure Code, 1908, envisages that one of the conditions which must exist in order to call that section into play is that the former suit must have been between "the same parties or between parties under whom they or any of them claim".

It has been pointed out by the Privy Council that section 11 enacts the rule of *res judicata* and is not exhaustive; see *Hook v. Administrator General*, I.L.R. 49 Cal. 499 P. C. It is proper, therefore, to refer to English decisions which deal with the different aspects of the rule in order to construe the section, and in particular the words in question cited above: cf. *Soorjomonee Dayee v. Suddanand Mohapatra*, 12 Beng.L.R. 304 P. C.

The rule rests upon the principle that the decision of a Court of competent jurisdiction is, subject to appeal, final and binding upon all parties *hereto*. If it is wrong, it can only be set aside by the proper appellate authority; and unless when it is shown to have been obtained by fraud, it cannot be re-opened: *Badar Bae v. Habib* (1909) A. C. 615, 623; *Bright v. Seallat* (1904) K. B. 6; *Pearce v. Marriott*, 22 Ch. D. 182; cf. also *Rajaram v. Central Bank of India*, 28 Bom. L.R. 879; *Ahmed Bhaudin v. Babu*, 31 Bom.L.R. 778.

But a decision (except in cases of judgments *in rem* dealt with in section 41 of the Evidence Act, 1872), only binds the parties and privies. It does not bind a stranger, for it is contrary to natural justice that any one should be injured by a determination that he, or those under whom he claims, was not at liberty to controvert. Accordingly, "a stranger shall neither take advantage nor be bound by the estoppel" (see *Smith's Leading Cases* II 672). This is the exception to which the relevant words of section 11 give effect. It is plain therefore that (1) the decision in the former suit could not have operated as *res judicata* as against Government if (Government were minded to challenge it; (2) that in a suit between the plaintiff and Government, the latter *alone* could not have taken advantage of the decision to preclude the plaintiff from challenging it.

But, in this suit, the parties are (with the exception of Government) those who were represented in the former suit, and the real dispute is between them. The decision in the former suit being binding as between the plaintiff and defendants Nos. 2-5 cannot be re-opened. Government though a necessary or proper party to the present suit was not interested in the dispute; therefore, the mere circumstance that it was not a party to the former suit cannot affect this position.

Upon a proper construction of section 11 of the Civil Procedure Code, the plaintiff's plea that defendant No. 2 was not a stranger of the same nature as *res judicata*. The contrary construction of that section, which would permit the plaintiff to re-open the previous decision of the High Court, is further inadmissible for the following reasons:— (1) It would fail to give effect to the words "any of them". The section does not in terms require that every one of the parties to the later suit should have been a party or represented in the former suit. (2) It would be contrary to the principle of law that a judgment given by a Court of competent jurisdiction is binding on the parties thereto; for it would enable the plaintiff to avoid the decision even as against those claiming through her. That principle founded upon considerations of public policy, is a fundamental principle of the legal system; and it cannot be negatived except by express words of a statute. (3) It will lead to considerable public inconvenience and mischief. A person against whom a decree is passed would be in a position to re-agitate the matter, circumventing section 11 by impleading in the second suit some person (not previously impleaded) who could with some

7. It is next contended by the plaintiff that rules 74A and 74B of the Land Revenue Rules are inconsistent with the principles and provisions of the Watan Act and are therefore *ultra vires* of the latter. How the inconsistency arises is not stated by the plaintiff. In point of fact, the rules are perfectly consistent with the principles and provisions of that Act. Section 32 of that Act clearly contemplates that watan property may be voluntarily relinquished even where the right of service is not likewise abandoned. Moreover, the Bombay Land Revenue Code, 1879, which is a later Act, provides by section 76 that section 74 (which enables an occupant to relinquish his land in favour of the Crown) shall apply as far as may be to the holders of alienated land (which includes watan lands). Section 214 of the Code, under which the rules in question were made, empowers Government to make rules to carry out the purposes and objects thereof; and the rules in question which supplement sections 74 and 76 are undoubtedly within that power. Even on the assumption that these rules were not quite consistent with the provisions or principles of the Watan Act (which is an earlier law), the circumstance cannot affect their validity; the rules must in such event be taken to have effectively modified the Act: see *Secretary of State v. Bhaskar Krishnaji*, 27 Bom.L.R. 973 F. B. at p. 997.

8. The plaintiff also contends that the mandatory provisions of the rules were not complied with. Probably he has in mind the following provision of rule 74A:—"If the land is held hereditarily for service, the application shall be accompanied by the consent in writing of all persons who may, at the date of the application, have a present hereditary interest in the land". The question is whether plaintiff's consent in writing was necessary to defendant No. 2's application for relinquishment and that depends upon whether he had "present hereditary interest in the land" within the meaning of the rule. The expression must be construed in the light of the watan law and the personal law of the parties. The expression "persons having a hereditary interest in a watan" in section 4 of the Watan Act has been held not to include collaterals who have merely a chance of succeeding to the watan, and have not yet succeeded to it: see *Chinnava v. Bhimangowda*, I.L.R. 21 Bom. 787. The principle of the ruling may be usefully adopted for construing rule 74A, but it must be pointed out that the interest contemplated by that rule is interest, not merely in the watan, but *in the land* itself. Whatever the chances which the plaintiff may have of succeeding to the land at the death of defendant No. 2, it cannot be said that he had a present hereditary interest in the lands in question.

9. It follows therefore that defendant No. 2 held the watan lands absolutely and was holder thereof within the meaning of rules 74A and 74B of the Bombay Land Revenue Rules, and the relinquishment of the lands made by her and the re-grant thereof to her as ryotawa lands are valid.

New
L. P. Phadnis
10-6-44

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Copy was applied for in person on the
day of December 1944.

Clerk of the Cour

Copy was ready for delivery on the
day of December 1944.

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Clerk of the Cour

Received on - 26.7.43. Decided on - 20.11.44.
Registered on - 26.7.43. Duration:- 1 Year, 3 Months
25 Days.

IN THE COURT OF THE FIRST CLASS SUB-JUDGE, DHARWAR,
AT DHARWAR.

PLAINTIFFS.

L. C. CIVIL SUIT NO. 305 of 1943. .. EXH. 107.

Messrs. JAEKHANDI,
& BETDUR.

1. Pralhad Kalso Kulkarni, of Navalgund. PLAINTIFF.

AGAINST

Mr. KALAPUR.

1. The Province of Bombay.

Messrs. DIXIT, &
DURG.

2. Bhimabai bhritar Ganapatrao Kulkarni, of
Navalgund.

{ 3. Shamacharya Krishtacharya Rotti, Age 9,
{ minor by his guardian ad-litem mother
{ Rukminibai bhritar Krishtacharya Rotti,
{ of -Do-.

Mr. VAIDY

{ 4. Dod-Bhimappa) Hanamappa Bajantri, of
{ 5. San-Bhimappa) -Do-.

{ 6. Nagappa Fakirappa Sangti, of Navalgund.

Mr. KANAVIKAR.

7. Gurubhimacharya Krishtacharya (alleged
adoptive father Ganapatrao Kulkarni)
Rotti, Age 14, minor by his guardian ad-
litem genetive father Krishtacharya Guru-
Bhimacharya Rotti, of Navalgund. .. DEFENDANTS

CLAIM - Rs. 400/-.

(1) Plaintiff sues to obtain the following reliefs:-

(a) A declaration that the decision of the Revenue
Tribunal, dated 9.9.1942 was ultra vires, null
and void and not binding upon the reversionary
interests of the plaintiff.

(b) A declaration that the alienations made by the

defendant No. 2 in favour of the defendants 3 to 6 are void after the life of the defendant No. 2.

(c) To recover costs of suit from the defendants.

- 2) Plaintiff alleges in the plaint that the lands described in para one of the plaint were Kulkarniki Watan lands, that the defendant No.2, Bhimabai has only a life interest in them, that originally they -- belonged to Bhimabai's husband Ganapatrao who died in the year 1893, that Bhimabai adopted one Venkatesh in the year 1912, that Venkatesh died in June 1918 and his wife Laxmibai in October of the same year, that after the death of Venkatesh and Laxmibai, the plaintiff's grandfather, Bhimaji took possession of the plaint lands in the year 1919 as the next reversioner of Venkatesh as the defendant No. 2 was postponed in preference to the plaintiff's grandfather under Bombay Act V of 1886, Bhimaji died on 3.3.1925 but before his death, he made a will on 24.2.1925 purporting to bequeath a Hindu widow's limited interest in the plaint lands to Bhimabai, that after the death of Bhimaji, Bhimabai filed Spl. C.S.No. 107 of 1925 on the file of this Court against the plaintiff to recover possession of the plaint lands basing her title on the will made by Bhimaji, that the High Court decided in her favour in the year 1937 and in 1938 she took possession of the plaint lands from the plaintiff, that the only question considered and decided by the High Court was as to whether Bhimabai, the defendant No. 2, was a watandar of the same watan in whose favour a valid bequest could be made, that on this point the High Court held in favour of the defendant No. 2 and allowed her claim for possession of the lands, that the question as to what interest the defendant No. 2 took in the property under the will of Bhimaji i.e. whether her interest in the properties was an absolute ownership or whether it was the limited estate of a Hindu widow, was not before the High Court and no decision was given there-on.
- (3) The plaintiff further alleges that in the year 1942, the defendant No. 2 made an application to the Revenue Authorities for conversion of the plaint lands into Ryotwari as Sarkari lands, that the plff objected to the conversion of the lands but his objection was overruled, that the matter was taken to the Revenue Tribunal which also decided in favour of defendant 2 on 9.9.1942, that the order of the Revenue Tribunal was ultra vires, illegal, null and void and for the

following reasons:-

- (a) Government was not a party to the suit, filed by the deft No. 2 against the plaintiff i.e. Spl. Suit No. 107 of 1925; the question decided therein was not binding as between the plff and the Government (deft No. 1), the decision of the High Court that the defendant 2 was a watandar of the same watan was wrong as being contrary to the provisions of Section 5 of the Watan Act. After the death of Venkatesh and his widow Laxmibai in 1918, defendant No. 2 could not inherit the Watan property and her possession of some other Watan lands given to her by way of maintenance under an Award decree between her and her adopted son, the said Venkatesh, was not legal possession and could not constitute her a watandar. There was no sanction by -- Government for the alienations so as to render it valid after the death of Venkatesh. Hence, the very basis for the relinquishment proceedings started by the defendant No. 2 falls through and therefore, the whole proceeding is void ab-initio.
- (b) Assuming that the defendant No. 2 was a watandar as held by the Court, she was not the holder of the lands held for service inasmuch as she took only a limited interest in the suit lands under the will of Bhimaji. The High Court has not considered what interest defendant No. 2 took in the suit lands under the said will. The Revenue Tribunal has erred in assuming that the High Court had decided that the defendant No. 2 took an absolute interest in the suit lands under the will of Bhimaji. The defendant No. 2 not being the full owner of the plaintiff lands had no right to apply for their conversion into Raitwari lands. A proper construction of the will would show that the defendant No. 2, Bhimabai, could take and has taken only a limited estate of a Hindu widow.
- (c) The Revenue Tribunal and the Revenue authorities had no -- jurisdiction to decide as to whether the defendant No. 2 took an absolute estate or a limited estate only in the suit lands under the will of Bhimaji, that was a matter exclusively for the Civil Court. The Revenue authorities having assumed -- jurisdiction not vested in them by any provision of law, the orders passed by them are absolute nullities.

- (d) Rules 74A and 74B of the Land Revenue Rules are contrary to and inconsistent with the principles and the provisions of the Watan Act. The said rules are not, therefore, applicable to Watan properties and to that extent they are ultra vires.
 - (e) Assuming that the said rules are applicable to Watan property, it is submitted that the mandatory provisions thereof have not been complied with and on this ground also, the proceedings before the Revenue authorities are void.
 - (f) Defendant No. 2 having only a limited interest in the plaint lands, had no authority to relinquish the lands; there was no legal or justifying necessity for so doing; her action was unauthorised and illegal under Hindu Law and the orders of the Revenue authorities cannot render them valid and binding on the plaintiff.
 - (g) Defendant No. 2 has committed fraud on the revenue authorities. In her application, she alleged that she had incurred debts for litigation and that it was absolutely necessary to convert the lands into Raitwari so as to enable her to dispose of them and pay off the debts. But immediately after the order of the -- Revenue Tribunal, she has made a gift of about 100 acres in favour of the defendant No. 3 and sold only one land, S. No. 104 to the defendants 4 to 6.
- (4) That the gift and sales made by the defendant No. 2 were not valid beyond the lifetime of the defendant No. 2 and not binding upon the reversionary right of the plaintiff, that the defendant No. 7 claims to have been adopted by the defendant No. 2 recently, that the defendant No. 2 has no right or power to make any adoption, that her power to adopt came to an end when her son Venkatesh died leaving behind him his own widow Laxmibai, and it cannot be revived on the latter's death, that he has been impleaded to the suit to avoid further litigation, that the cause of action for the suit arose in October 1942 when the decision of the Revenue Tribunal was communicated to the plaintiff, that notice as required by Section 80 of the C.P. Code has been given to the Provincial Government of Bombay, the defendant No. 1 to the suit and that plaintiff has filed the suit to obtain the declaration as above.
- 5) The defendant No. 1 - the Provincial Government of Bombay - in its

written statement Exh. 49 contends that the notice given under Section 80 of the C.P. Code was defective inasmuch as the plaint does not contain an averment as to the method of service of notice, that the suit was barred under Section 4 of the Revenue Jurisdiction Act that Bhimabai, defendant No. 2, was a watandar of the same watan, that plaintiff is precluded from denying that fact by the principle of Res-judicata and Estoppel in view of the decision of the High Court in First Appeal No. 321/1935, which the Government accepts, that under the will of Bhimaji, the defendant No. 2 took an absolute estate and not the limited interest of a Hindu widow, that Bhimabai was competent to relinquish the plaint lands in favour of the Government, that the said relinquishment was valid and legal, that the plff had no right to question its legality or propriety, that the action taken by the Collector of Dharwar was under rules 74A and 74B of the Land Revenue Rules read with Sections 74 and 76 of the Bombay Land Revenue Code was intra vires, that the provisions of the said rules and said sections have been substantially complied with, that the allegations of want of legal necessity and the subsequent fraud committed by the defendant No. 2 are irrelevant and do not arise for consideration under the rules of relinquishment, that the revenue rules of relinquishment are not ultra vires or inconsistent with or opposed to the fundamental principles of the Vatan Act as alleged in the plaint, that the plaintiff was not entitled to the reliefs sought that the suit should be dismissed and its costs allowed.

- (6) The defendant No. 2 in her written statement Exh. 35 contends that the High Court decision in First Appeal No. 321/1935 that she was a watandar within the meaning of the Vatan Act was binding upon the plaintiff as Res-judicata, that the plaintiff had raised a contention in the previous litigation that Bhimaji had no power to make a will and the will made by him was illegal and invalid, that it was not his contention in the previous suit that the will conferred only a life estate, that the plaintiff was therefore debarred from saying in this suit that the will gave only a life interest in the plaint properties, that as a matter of fact, Bhimaji's will gave her an absolute interest in the property devised, that under the said will she was full owner of the plaint lands and was fully competent to relinquish the said lands to the Government under the Land Revenue Rules, that plaintiff

has not ~~given~~ right to question the legality or propriety of the action taken by her, that the Collector's action in accepting her relinquishment and regranting the lands on Raitwari Tenure was perfectly valid and legal as also the final decision of the Revenue Tribunal, that a Civil Court was not competent to give a declaration that the decision of the Revenue Tribunal was ultra vires, that the suit was barred by the Revenue Jurisdiction Act, that she has duly adopted the defendant No. 7 as a son to her deceased husband, that the question of the validity or legality of the adoption made by her does not arise in this suit as the plaint lands were Stridhan property and she was competent to deal with them in any manner she pleased, that the suit should be dismissed and her costs awarded.

- (7) The defendant No. 3 is a donee of some of the plaint lands from the defendant No. 2 after their conversion into Raitwari lands. The contentions raised on his behalf by his guardian ad-litem are the same as those raised in the written statement of the defendant No. 2 (Vide Exh. 37). It is unnecessary to summarise them over again. Defendants 4 to 6 are alienees of S. No. 104 from the defendant No. 2. Their contentions are also the same as those of defendant No. 2. (Vide Exh. 39). Defendant No. 7 is the alleged adopted son of the defendant No. 2. The contentions raised on his behalf by his guardian ad-litem are also the same as those raised by the defendants 1 and 2 (Vide Exh. 41). In addition, he contends that his adoption was valid and legal under Hindu Law, that he would be the next reversioner of the deceased Venkatesh by virtue of his adoption, that plaintiff has therefore no right of suit, and that the value of the plaint lands for purposes of pleader's fees should be not less than Rs. 15000/- which is the market value of the said lands

On the above pleadings, the following issues were framed at Exh. 58:-

ISSUES

- (1) Does the notice given by the plaintiff to the defendant No. conform to the provisions of Section 80 of the C.P. Code.?
- (2) Is the suit barred under Section 4 of the Revenue Jurisdiction Act.?
- (3) Is plaintiff at liberty to allege in this suit, in view of the decision of the High Court in First Appeal No. 521 of 1935 --

against the judgment and decree passed by this Court in Spl. Civil Suit No. 107 of 1925, that the defendant No. 2 was not a watandar of the same watan, that the alienation of the plaint lands by the deceased Bhimaji to her under his will was illegal and invalid and that at best the will ~~was illegal and invalid~~ conferred upon the defendant No. 2 a life interest in the plaint property.?

- (4) If so, does plaintiff prove that the plaint lands were still watan lands and that the defendant No. 2 has only a life interest in them.?
- (5) If so, is it further proved that the decision of the Revenue Tribunal referred to in the plaint was illegal, ultra vires and not binding upon the plaintiff.?
- (6) Are the alienations of R.O.No. 104 by the defendant No. 2 in favour of the defendants 4 to 6 and the gift of some other lands in suit in favour of the defendant No. 3, not binding upon the plaintiff.?
- (7) Is plaintiff entitled to the declaration sought.?
- (8) What decree should be passed.?

The following two issues have been subsequently added at the instance of the pleader for the defendant No. 7.

- (9) Does defendant No. 7 prove the factum and validity of his adoption by the defendant No. 2.?
- (10) If so, has plaintiff the right to file this suit.?

FINDINGS

- (1) Yes after the amendment of the plaint.
- (2) Yes.
- (3) Plaintiff not entitled to allege that the defendant No. 2 was not a watandar of the same watan and that the alienation by will of the ~~same watan~~ plaint lands by Bhimaji was illegal; he can say that the will of Bhimaji conferred a life estate only on the defendant No. 2; it is however held that the said will has conferred full proprietary interest on the defendant No. 2.
- (4) Not proved.
- (5) Not proved.
- (6) They are binding upon the plaintiff; the latter has no right to

challenge the said alienations.

(7) No.

(8) As below.

(9) The factum of adoption proved; but it is held that the adoption is not valid.

(10) Plaintiff not debarred from filing this suit because of the -- adoption of the defendant No. 7 by the defendant No. 2.

REASONS

(8) Issue No. 1:- In para 10 of the plaint it is stated:- "Notice under Section 80 of the Civil Procedure Code has been delivered to the Collector of Dharwar, for the suit against defendant 1. The objection as to the validity of the notice is that the plaint does not contain an averment as to the method of service of notice. The Government pleader relied upon the decision of our High Court in First Appeal No. 308 of 1939 in which Beaumont C.J. observes as follows:- 'I think the plaint must show at any rate which of the two alternative forms of service had been adopted, whether notice had been delivered to the Official in question or left at his office. It is probably desirable to give the details of the service, but it is essential to say which method was adopted and not merely to allege as the plaint does in this case that due notice was given under the Act. It does not disclose which method of service was adopted and therefore does not comply with the section'. In order to remove the defect, if any, the plaintiff gave an application, Exh. 106 for amending paragraph 10 of the plaint so as to disclose the method of service of the notice and it has been allowed. The defect has been cured and so I record my finding in the affirmative on Issue No. 1.

(9) Issues Nos. 9 and 10:- The defendant No. 7 is a minor boy. His -- natural father who gave him in adoption has been examined at Exh. 97; Bhimabai, the defendant No. 2, who took the boy in adoption at Exh. 98. Narashimha Venkatesh Hulgur, Exh. 100, a photographer from Hubli has taken the photo, Exh. 101 of the adoption ceremony. Exh. 102, Malhar Devji Joti has attested the deed of adoption, Exh. 99, dated 26.5.1943. Exh. 100, Laxmanbhat Joshi has officiated as priest in performing the religious ceremonies of Homa and Havan. He has also attested the deed of adoption. I rely upon the testimony of the witnesses Exhs. 97, 98, 100, 102 and 104 and rely upon the deed of adoption Exh. 99 and the photo Exh. 101 and hold the factum of the adoption proved. On the --

question of the validity of its adoption, I must hold in the -- present state of the law that it is not valid. It is an admitted fact that Venkatesh Bhimabai's adopted son died on 13.6.1918 (Vide Exh. 69). His wife Laxmibai died on 12.10.1918 (Vide Exh. 68) i.e. four months after. It is observed as follows inulla's Hindu Law 1940 Edition pages 533-534:- 'If the son dies leaving a son or a wife, the widow's power to adopt comes to an end at his death, and she cannot thereafter exercise it, though she may have been expressly authorised by her husband to adopt in the event of the son's death. The reason is that the estate then vests in an heir of the deceased son on the widow cannot adopt to her husband so as to -- divest the estate taken by that heir. In a recent Privy Council decision (Amarendra Mansing Vs. Santan Singh, 35 Bom. L.R. 859) the true reason is said to be that "where the duty of providing for the continuance of the line which was upon the father, and was laid by him conditionally upon the mother, has been assumed by the son and by him passed on to a grandson or to the son's widow, the mother's power is gone". The power to adopt once it comes to an end becomes extinguished forever and it does not revive even when, on the death of the son's nearer heirs, the estate reverts to the widow and -- becomes vested in her'.

- 10) Now, coming to the decided cases, the earliest is 17 Bom. 164 in which the facts whereas follows:- "One Trimbak died leaving a widow Gangabai and a son, Sadashiv, surviving him. Sadashiv afterwards died childless, leaving a widow, Annapurnabai, who also died. Upon her death, her mother-in-law, Gangabai, succeeded as Sadashiv's heir. On the 2nd October 1885, she adopted the plaintiff, Krishnarao to herself and her deceased husband, Trimbak. Krishnarao sued as such adopted son to recover certain property. It was held by Sir Charles Gargant, Chief Justice and Justice Birdwood that the adoption was invalid according to Hindu Law. The following rulings of the Privy Council were quoted with approval viz (1) Bhoobun Loyee Devi Vs. Ram Kishore (10 Moore's Indian Appeals 279) (2) Padma Cumari's case (8 Indian Appeals 229) (3) Thymmal Venkatram (14 Indian Appeals 67). In the first mentioned case, Their Lordships of the Privy Council observe:- "by the vesting of the estate in the widow of the son, the power of adoption (of the mother) was an end and incapable of execution".

The next case is 26 Bombay 526 in which the facts were as follows:- One Sitabai's husband Ramachandra died in the life time of his father Anandrao, leaving his widow Sitabai and a son, Sakharam surviving. Anandrao died in 1878 and his estate passed to his grandson Sakharam. The latter died in 1886 leaving a widow Gangabai and a son Dattatraya. Then Gangabai died and thereafter Dattatraya died unmarried. On his death his grand-mother Sitabai succeeded to his property. On the 12th April 1894, Sitabai adopted plaintiff and executed a registered deed of adoption on the 23rd April 1894. Sitabai died in 1895 and the defendants who were cousins of her husband took possession of a portion of her property. Thereupon, the plaintiff as her adopted son, filed this suit. The defendants denied that the plaintiff's adoption by Sitabai was valid. It was held that the plaintiff's adoption was invalid as the power of the grand-mother came to an end on the death of her son leaving a son. Justice Chandavarkar observes as follows:- If Mr. Chamber's -- contention be correct, a widow can adopt without any limit as to the period within which such adoption may be made and her power is never at an end, it is only suspended so long as the estate is vested in others, but directly it comes to her from those others, it is revived. The language of the judgment in Bhobun Moyee's case, however, is so explicit that it is impossible to construe it otherwise than as meaning that there is a limit to the period within which a widow can exercise her power of adoption and that once that limit is reached, the power is at an end. The language is repeated and emphasised by Their Lordships in their judgment in Padma Coomari's case and Thayamma's case. We agree, therefore, with the Division Bench of this Court which decided Hasabnis's case (17 Bom. 164) that the language of the Privy Council is -- altogether inconsistent with any idea of the right to adopt being merely suspended during the widow's lifetime. The test, then, of the principle defining the limit to the period within which an adoption may be made by a widow to her deceased husband does not depend upon the mere vesting of the estate in her at any time. It must be found in other conditions than such vesting and what these conditions are is explained by the line of reasoning which Lord Kingsdown has used in the judgment in Bhobun Moyee's case; that is:- The vesting of the estate in the widow of the son of Bhobun

Bhawani was a proper limit to the exercise of the power and the moment that limit was reached, the power was at an end.

- (12) In Amarendra Mansing's case (35 Bom. L.R. 859) Their Lordships after examining the three earlier cases before the Board mentioned above observe as follows at pages 867-868:- So far then, Their Lordships think, it was well established that a power of adoption in a mother was extinguished when her son had died leaving a widow to whom the son's estate passed by inheritance'. Again on page 871 They observe: It being clear upon the decisions referred to that the interpolation of a grandson or the son's widow, brings the mother's power of -- adoption at an end, but that the mere birth of a son does not do so, and that this is not based upon a question of vesting or divesting of property,. Their Lordships think that the true reason must be that where the duty of providing for the continuance of the line for spiritual purposes which was upon the father and was laid by him conditionally upon the mother, has been assumed by the son and by him passed on to a grandson or to the son's widow, the mother's power is gone. But if the son die himself sonless and unmarried, the duty will still be upon the mother and the power in her which was necessarily suspended during the son's lifetime will re-vive".
- (13) In Ramachandra Badale V. Murlidhar Khamekar (39 Bom. L.R. 599) the facts were:- A Hindu died leaving him surviving a widow and a son. After the death of the son, the son's widow remarried; subsequently the widowed mother adopted a son. It was held by Justices Broomfield and Wassoodev that the adoption was invalid. On page 605, Justice Broomfield observes as follows:- All that it was necessary for Krishnaji (son) to do was to provide for the continuance of the line by marrying and leaving a widow to succeed him. It is not contended that in such a case, the mother could at once adopt a son to her own husband, and obviously that would be most inequitable. Mr. Dharap says that her power to adopt would be in suspense until the son's widow died reach the age of discretion or died or remarried before doing so. But, apart from the uncertainty and confusion likely to result from any such doctrine, it is directly contrary to the dictum of Their Lordships at page 260 that the question whether the mother's power to adopt is extinguished or not depends on the conditions -- existing at the son's death. I am not prepared to accept the --

contentions of the learned Advocate for the appellants that the rule laid down by Their Lordships of the Privy Council in Amarendra's case needs be or ought to be qualified in the manner suggested by him. I think we must hold on the authority of that case that Gangabai's power to adopt a son was extinguished on the death of Kirshnaji leaving a widow. The learned Trial Judge is, therefore, right in his finding that the adoption of Narayan was invalid

The learned pleader for the defendant No. 7 relied on the case in A.I.R. 1941 Nagpur 116 - I.L.R. 1941 Nagpur 178 in which it has been held that "where A died leaving behind him his widow C and son B and B dies leaving behind him his widow D who remarries. The power of C to adopt is revived and she can validly adopt a son to her deceased husband". This decision is directly opposed to the decision in 39 Bom. L.R. 599 mentioned above. But, so far as this Court is concerned, it is bound to follow the Bombay ruling in preference to the Nagpur irrespective of the fact as to which is more reasonable, equitable and logical. Having regard to the language used by Their Lordships in Amarendra Mansing's case and in the earlier cases referred to therein, I do not think that the Nagpur decision can be upheld. In the beginning two limitations were placed upon the right of a Hindu widow to make an adoption viz, (1) she must have an existing right to make an adoption and (2) that by her adoption she must not divest an estate vested in another. The effect of the ruling in Amarendra Mansing's case is to do away with the second limitation. The first limitation was left untouched and so far as this province is concerned, the rulings in 17 Bombay 164, 26 Bom. 527 have not been overruled either expressly or by necessary implication by any subsequent ruling of the Privy Council. In 39 Bom. L.R. 599 these rulings have been held to be still good law so far as the limit to the period within which a widow can exercise her power of adoption and that once that limit is reached, the power is at an end. I therefore hold that the adoption of the defendant No. 7 is not valid in law. I record my finding in the affirmative regarding the factum of adoption and in the negative regarding its validity. In view of my finding on Issue No. 9, Issue No. 10 does not survive.

- 14) I now take up for consideration, the remaining issues in the case. It is an admitted fact that the plaint lands and some other Kulkarniki --

Watan Inam lands of Navalgund originally belonged to one Ganapatrao Kulkarni, the husband of the defendant No. 2 who died in the year 1893 leaving behind him his wife Bhimabai as his heir under Hindu Law. Bhimabai adopted one Venkatesh, her sister's son, in the year 1912. Soon after the adoption, disputes arose between Bhimabai and the adopted son which were referred to arbitration. The arbitrators gave their award; the award was filed in Court and a decree was passed in terms of the award. Under the award decree Bhimabai was given four lands viz, R.S.Nos. 85, 208, 378 and 976, all Kulkarniki Watan lands, for her maintenance for life (Exh. 94). Another land, viz, S. No. 367, all Kulkarniki Watan land was given to one Tungabai kom Rangarao Kulkarni who was the sister of Venkatesh also for maintenance (Exh. 93). These lands do not form the subject matter of this suit. They are in the possession of the defendant No. 2. The plaintiff lands ~~were~~ went into the possession of Venkatesh as the adopted son of Ganapatrao Kulkarni. As stated above, Venkatesh and his wife Laxmibai died in the year 1918 leaving no issue. Bhimabai entered into possession of the said lands. But by virtue of Act V of 1886, she was postponed in the order of succession to a male member of the family qualified to inherit the watan lands. (Act XI of 1923 was not then in force). The plaintiff's grandfather Bhimaji Kalso claimed to be the nearest male heir of the deceased Venkat. His claim was upheld by the Revenue Officers and he was put in the possession of the plaintiff lands. He also gave an application on 2.7.1920 for the restoration of the lands given to Bhimabai for her maintenance by the award decree (Vide Exh. 94). The Prant Officer, refused his request. In his order he observes as follows:- 'Now the question is not whether the said Bhimabai is or is not a watandar according to the technical meaning of the term 'Hakdar' but whether she is entitled to maintenance as a member of the watan family. It is admitted that she is such and it is also admitted that she is -- entitled to maintenance. In such circumstances, her possession cannot be disturbed against her will. So, the request of the applicant for restoration is refused' (Vide Exh. 70, dated 30.8.1920). Bhimaji preferred an appeal to the Collector but his appeal was dismissed. The Collector observes in his order, dated 29-10-1920:- "The lands in question are in the possession of the mother of the last male --

holder for maintenance under a Civil Court's award. The mother has a right to retain these lands during her lifetime even as against the reversioner of the last holder i.e. against appellant. The Collector therefore declines to interfere with the order of the District Deputy Collector and the appeal is dismissed" (Vide Exh.71). In appeal to the Commissioner, the latter refused to interfere (Vide Exh. 72, dated 26.1.1921). As a last resort, Bhimaji appealed to the Government of Bombay but he was informed by G.R.R.D.No. 566, dated 1-9-1921 that 'Government declines to interfere'. (Vide Exh. 76). So, Bhimabai (defendant No. 2) remained in possession of the lands given to her for her maintenance in the year 1913 by the award decree and is still in possession. The land given to Tungabai for her maintenance had come, some how or other, into the possession of Bhimabai, the defendant No. 2. In 1927, the plaintiff had made an application for the restoration of the said land (Vide Exh. 93). Bhimabai intervened in the restoration proceedings and contended that the land was in her possession. The ~~Plaint~~ Prant Officer upheld her contention and declined to restore the land to the plff (Vide Exh. 73). Plaintiff does not appear to have taken the matter in appeal and so the land - S. No. 367 - is even till this day in the possession of the defendant No. 2.

- (15) Bhimaji died on 3.3.1925 but before his death he made a will on 24.2.1925 (Vide Exh. 89). The will is registered and has been held proved in the previous litigation between the plaintiff and the defendant No. 2 i.e. in Spl. C.S.No. 107/25 and First Appeal No. 321 of 1935 (Vide Exhs. 74 and 88, copies of the judgments of the Trial Court and the High Court respectively). The execution or genuineness of the will of Bhimaji has not been called in question by the plaintiff in this suit. His contentions regarding the said will are that it confers upon the defendant No. 2 not an absolute interest in the plaint property but a life interest only and that inasmuch as the defendant No. 2 was not a watandar of the same watan as Bhimaji, the bequest was not valid. The first point has not been decided in the previous litigation as it was not necessary for the decision of the suit. That question has been specifically raised in this suit and must needs be decided. It is quite clear from the language used in the will that the testator's intention was to give the plaint lands

absolutely to the defendant No. 2. The relevant portions of the will read as follows:- "I am now aged 55; my wife died about 20 years before; my son Kalso died 10-11 years before; his son -- Pralhad and widow Indirabai were living with me and being looked after by me. But, my daughter-in-law Indirabai had made an application against me regarding the wahivat of the watan lands and ceased to take care of me. I am weak in body. I had no other person to take care of me. I therefore requested you to look after me. You agreed ~~to~~ provided I came and stayed in your house. Accordingly I am residing in your house since the last 5 or 6 months. You have been taking proper care of me forgetting that I had taken possession of your lands after the death of your adopted son, Venkatesh. I am now repenting for my past deeds. I have come to regard you with affection.....I therefore wish that you should be full owner of the lands of which I have taken possession after the death of Venkatesh, on my death. (

).....By this will, I have made you owner-() of the said lands after my death. You should take possession of all the above-mentioned lands after my death and enjoy them as full owner and in any manner you like (

My son and daughter-in-law have absolutely no concern with the said lands which originally belonged to your family and which I got by inheritance and which were therefore my self-acquired property and not ~~an~~ ancestral property".

- 6) The testator has given the reasons for making the will in favour of Bhimabai, the defendant No. 2. The first thing was that his daughter-in-law refused ~~to~~ neglected to look after him during his old age and illness and that the defendant No. 2 did that although he had taken possession of most of the lands which belonged to her family. The second thing which induced him to make the will was repentance for past conduct and his desire that the lands which ~~originally~~ once belonged to Bhimabai's family should go back to the said family. The learned pleader for the plaintiff argued that it must not have been the intention of Bhimaji to confer upon the defendant No. 2,

nigher right than what she would have got, if she herself had inherited the lands from her adopted son, Venkatesh. But the intention will have to be gathered from the language of the document and the surrounding circumstances.

- (17) Sir Dinsha Mulla observes as follows on page 445 of his book on Hindu Law, 1940 Edition, paragraph 380:- "An important rule applicable to wills and deeds of gift is that a benignant construction is to be used; and that if the real meaning of the document can be reasonably ascertained from the language used, though that language be ungrammatical or un-technical or mistaken as to name or description, or in any other manner incorrect, provided it sufficiently indicates what was meant, that meaning shall be enforced to the extent and in the form which the law allows".
- (18) Again on page 467, in considering gifts and bequests to widows, daughters and other females, the learned author observes as follows: "Whether a gift passes an absolute or a limited estate depends on the terms of the grant in each case. (9 Cal. 830). This is so not only under the Hindu Law, but under all other systems of law in force in British India. In the case however, of a gift or ~~deed~~ made to a Hindu female by her relations, the Judicial Committee has laid down that in construing a deed of gift or a will made by a Hindu in favour of female relations, the Court is entitled to assume that the donor intended the donee to take a limited estate only, unless the contrary appears from the deed or will. The basis of the rule is that females as a rule take a limited estate only in property inherited by them from male relations and the donor must be presumed to have made the gift - with that fact present to his mind. The leading case on the subject is Lahommed Shumsool v. Shewakram. In that case Their Lordships of the Privy Council said:- In construing the will of a Hindu it is not improper to take into consideration what are known to be the ordinary notions and wishes of Hindus, with respect to the devolution of property. It may be assumed that a Hindu knows that, as a general rule, at all events, women do not take absolute estates of inheritance which they are unable to alienate".
- 19) But on page 469, we find the following observations:- In fact later decisions of the Judicial Committee have made it clear 'that if

words are used conferring absolute ownership upon the wife, the wife enjoys the rights of ownership, including a full right of alienation, without their being conferred by express and additional terms, unless the circumstances or the context were sufficient to show that such absolute ownership was not intended' or that it was possible by the use of words of sufficient amplitude to convey in the term of gift itself the fullest rights of ownership including the power to alienate which the High Court thought were required to be added by express declarations. These decisions may be divided into the classes, namely:-

- (a) where the gift is coupled with a power of alienation.
- (b) where the word Malik (owner) or other words importing absolute ownership, are used in the deed or will.

In case (a), that is, where a gift is coupled with a power of alienation, the Court readily infers an intention to grant an absolute estate. Thus where a testator bequeathed certain property to his daughter and her son 'for your maintenance' with power of making alienation thereof by sale or gift, it was held by Their Lordships of the Privy Council that each of them took an absolute interest in a moiety of the property, and the words 'for your maintenance' did not reduce the interest of either of them to one for life only.

The second class of case is the one where the word Malik (owner) or other words importing absolute ownership are used in the deed or will. The word 'Malik (owner) imports full proprietary rights including a full right of alienation unless there is something in the context or on the surrounding circumstances to indicate that full proprietary rights were not intended to be conferred. Hence it has been held that words of disposition in a deed of gift or will that the donee shall 'become malik (owner) of all my properties' or -- similar words, confer an heritable and alienable estate in the -- absence of a context which indicates a different meaning."

- (20) I do not think it is necessary to specifically refer to the decided cases on the point. They have all been collected in the foot notes on pages 467 to 471 of Mulla's Hindu Law, 1940 Edition. Applying the principles stated in paragraph 401 of Mulla's Hindu Law to the facts of this case and to the language used in the will of Bhimaji, I am inclined to hold that the testator intended and has conveyed full

proprietary interest to the defendant No. 2 in the plaint lands. At more places than one, the testator has used the word Malik in mentioning the interest he conferred upon the devisee. He has further stated that the defendant No. 2 was at liberty to make wahivat of the lands in any manner she liked. He has further taken care to state that his grandson and daughter-in-law have no manner of right over the lands in question which he got by inheritance and which he was at full liberty to dispose of in any manner he liked. The concluding words of the will are very significant. They are (

Having regard to the preamble of the will and to the clear and -- explicit words used in it, it is impossible to hold that the -- testator intended and has conveyed only a life estate to the defendant No. 2. It is no doubt true that the defendant No. 2 would have got only a life estate if she had taken the plaint lands by inheritance from her adopted son, Venkatesh. But, we should not forget the fact that the lands in question were inherited by a full owner who was entitled to transfer his own full ownership to anybody subject to the provisions of the Watan Act. I therefore hold that the will confers upon the defendant No. 2 full proprietary interest in the plaint lands and not only a life estate.

- (21) I now come to the question as to whether Bhimabai was a watandar of the same watan and as to whether this question is not Res-judicata in view of the decision of the High Court in First Appeal No. 321 of 1935. Bhimabai filed Spl. C.S.No. 107/1925 on the file of this Court on 7.12.1925 against the present plaintiff for possession of the lands bequeathed to her by Bhimaji under his will Exh. 89, dated 24.2.1925. Issue No. 5 raised in the Trial Court reads as follows:- Whether plaintiff (Bhimabai) proves that she is a member of the same watan as that of the deceased Bhimaji? The finding of the trial Court was in the affirmative (Vide Exh. 74). The suit was decreed with costs by this Court. The present plaintiff preferred an appeal to the High Court. The only question that was raised and considered by the High Court was the question as to whether the plaintiff-respondent was a watandar of the same watan as Bhimaji, the grandfather of the defendant-appellant. Justice Sen observes as follows in his main judgment as to whether Bhimabai was a watandar of the

learned same watan as Bhimaji.- 'The trial Judge has held that as the plff as a Hindu widow was entitled to maintenance, the interest which she acquired in the lands given to her by the award was legally acquired by her and that therefore the plaintiff is a watandar of the same watan. There is no doubt that on the adoption of Venkatesh the plaintiff became entitled only to maintenance as the widowed mother of Venkatesh. The arbitrators in their award Exh. 146, recognised the fact that the plaintiff became the complete owner of the entire property and stated in the award that the five lands which had been given into her possession, were so given for her maintenance and for the expenses of her pilgrimage. There can, therefore be no doubt that the lands were given for the purpose of her maintenance alone and not on any other ground; and that she can therefore be said to have acquired these five lands in a legal manner. Mr. A.G. Desai has not shown why the word "acquired" should not apply to such acquisition as the plaintiff obtained under the award. I think that the word "acquired" should be interpreted so as to include the acquisition of such interest in the watan property as was given by the arbitrators to the plaintiff, and that therefore, Section 5 cannot be said to come in the way of such acquisition by the plff. during Venkatesh's lifetime".

- (22) After referring to the Government Resolution No. 566, dated 1st September 1921 declining to interfere with the order passed by the ~~Prant~~ Prant Officer refusing to restore the lands given to Bhimabai for her maintenance by the award decree at the instance of Bhimaji Kalso and its confirmation by the Collector and Commissioner, His Lordship observes as follows:- "This shows that in 1921 Government did not interfere with plaintiff's possession of the five lands of which possession had been given to her by the award of 1913. Thus I think it can be said that all the requirements of legal acquisition were satisfied in this case and the plaintiff must be held to have legally acquired those five lands. Therefore, under the definition of Section 4, she must be held to be a watandar of the same watan as Bhimaji".
- (23) Justice Broomfield in his concurring judgment observes:- "The -- question is whether by reason of her holding those five lands, she comes under the second part of the definition, whether she is or was

at the material ~~date~~ time a person holding watan property legally acquired subsequent to the introduction of the Watan Act. Mr. Desai for the appellant argues that the words 'legally acquired' in Section 4 must be read subject to Section 5 of the Act which prohibits an alienation by a watandar to a person not a watandar of the same watan beyond the period of his life unless the sanction of Government has been obtained. I think this argument must be accepted and Section 4 must be read subject to Section 5 in this respect. But the alienation by the award was valid for the life of Venkatesh and though that in itself would not render the acquisition lawful within the meaning of the definition (See Ganapatrao V. Ganesh (1926) 28 Bom. L.R. 395). The evidence shows that the plaintiff's occupation of these survey numbers has been recognised by Government in 1921. The attempt ~~of~~ Bhimaji and his grand-son to recover possession from her failed -- because the Revenue authorities maintained the plaintiff's possession. It would probably be going too far to say that the subsequent sanction of the Revenue authorities validated the award. But this part of the watan property has passed into the beneficial possession of Bhimabai with the consent of the Collector. The Revenue authorities could not challenge the alienation under Section 9 of the Act or otherwise and I do not think that any one else could. Under the circumstances it is difficult to say that the property has been otherwise than lawfully acquired within the meaning of the definition". (Vide Ex.38).

- (24) The appeal was accordingly dismissed on 22nd December 1957. ~~There-~~ after Bhimabai gave Spl. D. No. 68/1938 and recovered possession of the plaint lands on 23.5.1938 (Vide Exh. 14). Now, the question -- arises as to whether the decision of the High Court in First Appeal No. 321 of 1935 does or does not operate as Res-judicata regarding the issue as to whether Bhimabai was a watandar of the same watan as Bhimaji, the grand-father of the plaintiff. In my opinion, it does. The learned pleader for the plaintiff argued that the plff defended Spl. S. No. 107 of 1925 filed by the defendant No. 2 against him for possession of the plaint lands in his individual capacity i.e. as the heir and grand-son of Bhimaji but that he has filed this suit in a representative capacity i.e. as the ^{or presumptive} next/reversioner of Venkatesh after the death of Bhimabai, that ^{he} was not therefore litigating under the same title in both the suits and that therefore the decision of

question about Bhimabai's status as a watandar does not operate as Res-judicata. I am not prepared to accept this argument. In the first place, this is not a suit by a reversioner to obtain a declaration that he was not bound by the alienation of a limited owner -- under Hindu Law after the latter's death. Bhimabai does not claim the plaint lands either as a Hindu widow or a Hindu mother. She claims them under the will made by plaintiff's grand-father who got them by inheritance under special law i.e. Bombay Act No. 5 of 1886. If Bhimabai is a watandar of the same watan as Bhimaji as held by the High Court in the previous litigation, she takes the plaint property as full and absolute owner. If she does not, the will made by Bhimaji was invalid under Section 5 of the Watan Act and Bhimabai's possession of the plaint lands would be illegal and unauthorized. In that case, plaintiff's remedy was to file a suit for possession of the plaint lands as against a trespasser. Plaintiff is not entitled to treat Bhimabai's possession of the plaint lands as the possession of a limited owner under Hindu Law and sue as a next or presumptive reversioner for a declaration that the alienation made by her was not binding upon the reversionary heir after her death. Such a suit is not competent under the circumstances of the case. In my opinion, the plaintiff filled the same capacity in both the suits and it is clear beyond doubt that the decision in First Appeal No. 321 of 1935 works as Res-judicata in this suit at-least so far as the defendant No. 2 is concerned and persons claiming -- through her i.e. defendants 3 to 6. The next question is as to whether it works as Res-judicata so far as the Government is concerned. Government was not a party to the previous litigation. In their written statement, the Government have said that they accept the -- decision of the High Court in First Appeal No. 321 of 1935 between the plaintiff and the defendant No. 2 regarding the latter's status as a watandar. In my opinion, the fact that the Government was not a party to the previous litigation does not prevent the question of Bhimabai's status as a watandar from operating as Res-judicata in this suit. Government's interest in the suit is not much. The -- question has been decided by the ~~Highest~~ Highest Tribunal in the land between the contesting parties and Government is justified in saying that they accept the said decision as governing the rights of

the parties interested in the litigation. Even supposing for the sake of argument that Government cannot take advantage of the -- decision of the said question in the previous litigation, I hold that Bhimabai is a watandar of the same watan as Bhimaji for exactly the same reasons on which Their Lordships based their decision in First Appeal No. 221 of 1935. I record my finding in the negative on the first two parts of Issue No. 3 and in the affirmative on the third part but hold that the will of Bhimaji conferred an absolute interest to the defendant No. 2 in the plaint properties.

- (25) On 13-11-41, Bhimabai (defendant No. 2) gave an application to the Collector of Dharwar expressing her intention to relinquish the plaint lands in favour of the Government and making a request for their re-grant under the Rayatwari Tenure (vide Exh. 77). This application strictly conforms to the ~~provisions~~ provisions of Rule 74A (1) of the Land Revenue Rules of 1921. She gave the formal notice in Form L, under Section 74 of the Land Revenue Code, 1879 to the Mamlatdar of Navalgund, on 31st January 1942 (Vide Exh. 78). The present plaintiff opposed the conversion of the lands on the ground that Bhimabai had a life estate only in the plaint lands, that he held the reversionary interest and that by the conversion his interest would be affected. The Collector considered his objections, over-ruled them and accepted the relinquishment. In his order, dated 11th March 1942, the -- Collector observes as follows:- Ganapatrao Martand was the original holder of these and some other six Kulkarniki watan lands of Navalgund. He died leaving behind him his widow Bhimabai (applicant). Bhimabai adopted one Venkatesh. There was a dispute between the adoptive mother and Venkatesh. An award was passed between them. Bhimabai got five survey numbers for her maintenance as a result of the award. The adopted son got nine S. Nos. in question and one S. No. went to one Tungabai, natural sister of Venkatesh. Venkatesh and his widow died subsequently issueless. Bhimaji Kalso, the grandfather of the objector inherited these nine S. Nos. as reversionary heir of Venkatesh. During his lifetime Bhimaji Kalso passed a will deed in favour of Bhimabai kom Ganapatrao. After the death of Bhimaji, the lands acquired by Bhimabai by virtue of the will deed are her self-acquired property. That Bhimabai was not a watandar within the meaning of Section 4 of the Watan Act and that the alienation by virtue of a will deed was null and void was contested in the Civil Court. The High

Court have held that Bhimabai is a watandar and that the alienation by way of will deed executed by Bhimaji Kalso is good. Pralhad Kalso (objector) was a party to the suit. In the circumstances narrated above there is no force in the objection of Pralhad about conversion. I therefore overrule his objection and order that relinquishment given by Bhimabai in respect of the nine S. Nos. in question should be accepted (Vide Exh. 81). On 14th May 1942 the Collector, regranted the said lands to Bhimabai on ordinary Rayatwari Tenure (Vide Exh. 82). The plaintiff carried the matter to the Revenue Tribunal which upheld the Collector's order and dismissed the appeal on 9th September 1942 (Vide Exh. 90). The Revenue Tribunal consisting of two Ex-High Court Judges i.e. Sir G.D. Madgavkar and Mr. P.B. Shinge and Mr. V.S. Bhide, Commissioner, S.D. observes as follows in its order:- "The appellant Pralhad Kalso Kulkarni claims that Bhimabai has only a life interest in the watan lands and that he himself has a reversionary interest on her death. In Appeal No. 321 of 1935, the High Court has, however, held that Bhimabai is a watandar of the Kulkarni watan having legally acquired the lands, and that she is, holding them in her own right. Bhimabai, is therefore, 'a holder' of these lands for the purposes of Land Revenue Rule 74-A. This is not a case of -- commutation under Section 15 of the Bombay Hereditary Offices Act of 1874 but of relinquishment of watan lands and their regrant as Rayatwari lands. Following our decision in our order No. O-160 of 1942, dated 30th May 1942, we are of opinion that the order of the Collector is correct and the appeal must be dismissed".

- (26) It is clear from the above that the Collector and the Revenue Tribunal have considered all the aspects of the case and have come to the right conclusion. Bhimaji Kalso was the full owner and holder of the plaint lands. By his will, he transferred full proprietary rights over the said lands to the defendant No. 2. As Bhimabai was a watandar of the same watan as Bhimaji, the will was valid and -- legal. It necessarily follows from this that Bhimabai was the holder and occupant of the plaint lands within the meaning of Sections 74 and 75 of the Land Revenue Rules Code and Rules 74A and 74B of the Land Revenue Rules. All the formalities prescribed by the said -- sections and rules have been followed in this case. The relinquishment and regrant are perfectly valid. The motive behind the action

of Bhimabai is irrelevant. She had a legal right to relinquish the lands and the Government a similar right to accept it and regrant the lands on ordinary Raitwari Tenure. It may be that the effect is prejudicial to the ultimate interest of the plaintiff. But there is no remedy for a legal injury. I hold that the decision of the Revenue Tribunal is perfectly valid and legal. The plaint lands are not now watan lands. They have been legally converted into Kayatwari lands. I record my findings in the negative on Issues nos. 4 and 5. In view of my findings on Issues Nos. 3, 4 and 5, the plaintiff is not entitled to challenge the alienations made by Bhimabai in favour of defendants 3 to 6. She was full and absolute owner of the plaint lands with unrestricted rights of alienation, after their conversion into Raitawari lands and the plaintiff has no manner of right, -- reversionary or otherwise, to challenge the said alienations. I, therefore, hold on Issue No. 6 that the alienations are good and ~~bind~~ binding upon the plaintiff.

- (27) The only issue that remains to be considered is Issue No. 2. In view of my finding that the order of the Revenue Tribunal was valid and legal, that the plaintiff was bound by it and that he has no reversionary or any other rights over the plaint lands, it follows that the suit is barred under Section 4, clause (a) sub-clauses 1 and 3 of the Revenue Jurisdiction Act (Act X of 1876). In *Khangavda Shivanagowda v. The Secretary of State for India*, 38 Bom. L.R. 1309 it has been held that a Civil suit against Government relating to ~~property~~ appertaining to the office of a village Patil is barred under section 4 (a) clause I of the Revenue Jurisdiction Act, 1876; it also comes under Section 4 (a) clause IV of the Act, if regarded as a claim against Government relating to land declared by Government to be held for service. The lands in this case were Kulkarniki watan Inam lands, assessed Rs. 228-9-0. The Judi levied on the lands came to Rs. 177-1-6, leaving a profit of Rs. 51-7-6. (Vide Exh. 77). By the conversion of the lands into ordinary Raitwari lands, the Government revenue has increased by Rs. 51-7-6. Government's pecuniary interest is therefore concerned in this suit. Plaintiff's pleader also argued that the suit is mainly directed against the Government. Again in *Mallappa Basavantrao Dasai v. Tukko Narasimha Mutalik*, 39 Bom. L.R. 289, it has been held that "a suit, whether between private parties or against Government which would have the effect of nullifying an

order made by the Collector, is barred by Section 4 (a) (3) of the Bombay Revenue Jurisdiction Act, assuming that the order is validly made and is not ultra vires under the Bombay Hereditary Offices Act, 1874. A suit in which the relief sought does not affect the position of Government at all, for instance, where a person seeks a declaration of his status as a watandar or with a view to approach the revenue authorities under Section 36 (3) of the Bombay Hereditary Offices Act, 1874, is not a suit to set aside or avoid an order within the meaning of Section 4 (a) 3 of the Bombay Revenue Jurisdiction Act, 1876. In such suits, Government is neither a necessary nor a proper party. If however, a declaration of status is sought and a claim for possession of lands is made in flat -- contravention of the orders of the revenue authorities, the suit certainly comes within the of clause (3), assuming that the orders are not ultra vires".

- (28) In this case, the plaintiff seeks for a declaration that the orders of the Revenue Tribunal was ultra vires, null and void and not binding upon the plaintiff. Such a declaration, if given, affects the pecuniary interest of the Government as shown above. It is not a declaration which does not affect the Government or in which Government is not concerned. The declaration, if given, will nullify the orders passed by the Collector re accepting the relinquishment of the plaint lands by the defendant No. 2 and ordering their regrent on ordinary Raitwari Tenure. It amounts to setting aside or avoiding the orders passed by the Collector and comes within the perview of clause 3 of Section 4 (a) of the Revenue Jurisdiction Act. I therefore hold that the suit is barred under Section 4 (a) of the said Act.

I record my findings as above upon the points raised and pass the following order.

ORDER

A Suit dismissed with costs. Plaintiff to pay the costs of defendants 1 to 6; one set for defendant No. 1 and one set for -- defendants 2 to 6. Defendant No. 7 to bear his own costs.
20.11.44.

Sd/ M.S. Bagali,
First Class Sub-judge.

TYPED BY

COMPARED BY

"TRUE COPY"

CLERK OF THE COURT.

Suits.

Dharwar.

For a declaration that the order of the Bombay Revenue Tribunal, No.0/242, dated the 9th September 1942, is ultra vires; and that alienations made by defendant No.2 in favour of defendants Nos.3-5 are void.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 339 ✓
Bombay Castle, 12th January 1945.

Read Government Resolution, Legal Department, No. 3042³⁰⁴²
dated the 22nd April 1944.

Letter from the District Government Pleader, Dharwar, No.595, dated the 5th December 1944, stating that the suit ----- noted
In the Court of the First Class Sub-Judge, : in the
Dharwar. : margin
Civil Suit No.305 of 1943. : was decided
Pralhad Kalso Kulkarni of Navalgund. Plaintiff; : by the
versus : First Class
The Province of Bombay and 6 others. Defendants.: Sub-Judge,
: Dharwar,
Claim - Rs.400. : On 20th
----- November
1944, when the following order was passed :-

"Suit dismissed with costs. Plaintiff to pay the costs of defendants 1 to 6; one set for defendant No.1 and one set for defendants 2 to 6. Defendant No.7 to bear his own costs."

Letter from the District Government Pleader, Dharwar, No.11, dated the 6th January 1945, forwarding uncertified copy of the judgment.

RESOLUTION.- The result of the suit is recorded.

By order of the Governor of Bombay,

Planned

Submitted for Signature
Original
BSM
11/1
P.A. AZ
A.S. 11/1

for { P. N. MOOS,
(Secretary to Government.

Issued
18/1
12/1

To

The Revenue Department.

The Commissioner, Southern Division.

The Collector of Dharwar.

Submitted after issue

File in file No. 6. Dharwar 4/44

BSM P.A. P. 13/11
13/11

S. D. W. 4/44
15/11/45

69 89

Decree.

In the Court of the First Class Sub-Judge
at Dharwar.

L.C.Suit No.305 of 1943.

1. Pralhad Kalso Kulkarni, caste Brahmin, age 29 occupation
Watani-wahivat of Navalgund. Plff.
- Vs.
1. The Province of Bombay.
2. Bhimabai bhritar Ganapatrao Kulkarni caste Brahmin age 63
occupation house-hold work of Navalgund.
3. Shamacharya Krishtacharya Rotti age 9 minor by his guardian
ad-litem mother Rukminibai bhritar Krishtacharya Rotti, caste
Brahmin age 35 house-hold work of Navalgund appointed as per
Order Ex.17
4. Dod-Bhimappa age 50 } Hanamappa Pajantri caste Korwar occu-
5. San-Bhimappa " 40 } pation agriculture of Navalgund.
6. Nagappa Fakirappa Sangati age 50 caste Lingayat occupation
agriculture of Navalgund.
7. Guru-Bhimacharya Krishtacharya (alleged adoptive father -
Ganapatrao Kulkarni) Rotti age 14 minor by his guardian ad-
litem genetive father Krishtacharya Guru-Bhimacharya Rotti
age 45 caste Brahmin occupation non-agriculture of Navalgund
appointed as per order Ex.7. Defts.

Claim Rs.400/-

Plff begs to state and submit as follows:-

1. The property in suit is as follows:-

R.S.No.	Acreage	Assessment	Judi.
101	26-2	Rs.44	Rs.34-14-0
104	25-28	47-0-0	37-5-0
186	3-7	1-8-0	1-3-0
190	1-21	2-8-0	2-0-0
366/2	7-26	12-9-0	10-0-0
369	18-34	31-0-0	24-9-0
416	22-16	42-0-0	33-4-0
438	17-6-0	34-0-0	26-15-0
439	7-13-0	14-0-0	11-2-0

All the above lands are kulkarniki watan lands in
which deft No.2 Bhimabai has only a limited estate i.e. the
limited estate of a Hindu widow.

2. The aforesaid lands originally belonged to Ganapatao
Kulkarni the deceased husband of deft No.2. After his death
deft No.2 adopted one Venkatesh who died in 1918 after the death
of the said Venkatesh and his widow Laxmibai, Bhimaji the

the grand father of plff took possession of all the suit lands in 1919 as the next reversioner entitled to the said lands. Deft No.2 had no interest in the said lands and she was not a watandar, the said Bhimaji died on 3-3-1925, but before his death he made a will on 24-2-1925 purporting to bequeath a Hindu widow's limited interest in the said lands to Bhimabai.

3. Bhimabai filed Spl.suit No.107 of 1925 in this court against the plff for possession of the suit lands basing her title on the will made by Bhimaji. The suit was ultimately decided in her favour by the High Court in 1937. The only question considered and decided by the High Court was as to whether Bhimabai deft No.2 was a watandar in whose favour a valid bequest could be made. The High Court decreed that she was a watandar and upheld her claim. The question as to what interest deft 2 took in the property under the will i.e. whether her interest in the properties was an absolute ownership or whether it was the limited estate of a Hindu widow was not before the court and no decision was given thereon.

4. Deft No.4 in pursuance of the decree of the High Court took possession of the properties in 1938. In 1942 deft 3 made an application to the revenue authorities for conversion of the suit lands into Rayatwari or Sarkari lands. The plff objected to her application but his objection was over-ruled. The matter was taken to the revenue Tribunal which also decided in favour of deft No.2 on 9-9-1942.

5. It is submitted that the order of the Revenue Tribunal is ultra vires, illegal and null and void on the following among other reasons:-

(a) Government was not a party to the suit filed by deft No.2 against plff i.e. Spl.Suit No.107 of 1925. The question decided therein was not binding as between the plff and the Government. The decision of the High Court that deft No.2 was a watandar is wrong as being contrary to the provisions of section 5 of the Watan Act. After the death of Venkatesh and his widow Laxmibai in 1918 deft No.2 and his mother could not inherit the watan and her possession of some other lands given to her by way of maintenance under an award decree between deft No.2 and the said Venkatesh was not legal possession and could not constitute her a watandar. There was no sanction by Government for the alienation so as to render it valid after the death of

71 9/1

Venkatesh. Hence the very basis for the relinquishment - proceedings started by deft No.2 falls through and therefore the whole proceedings is void and ab-initio.

(b) Assuming without admitting that the deft No.2 is a watandar it is submitted that deft No.2 is not a watandar of lands held for service, since deft No.2 took away only a - limited interest in the suit lands under the will of Bhimaji. The High Court has not considered what interest deft No.2 took in the suit lands under the said will. The interpretation of the will was not the subject of decision as it was not necessary for the disposal of the suit. The Revenue Tribunal erred in assuming that the High Court had decided that deft No.2 took an absolute interest in the suit lands under the will. Deft No.2 not being the holder in the sense of being a full owner of the lands had no right to apply for relinquishment. A proper construction of the will will show that deft 2 Bhimabai could take, and has taken only a limited estate of a Hindu widow.

(c) The Revenue Tribunal and the Revenue authorities had no jurisdiction to decide as to whether deft No.2 took an absolute estate or only a limited estate under the will. That was a matter exclusively for the civil court. The revenue authorities having assumed jurisdiction not vested in them by any provision of law, the orders passed are absolute nullities.

(d) Rules 74A and 74B of the Land Revenue Rules are contrary to and inconsistent with the fundamental principles and the provisions of Watan Act. The said rules are not, therefore, applicable to the watan properties and to that extent they are ultra vires.

(e) Assuming without admitting that the said rules are applicable to watan property it is submitted that the mandatory provisions thereof have not been complied with and on this ground also the proceedings of the revenue authorities are void.

(f) Deft 2 being entitled only to a limited interest in the suit lands, had no authority to relinquish the said

lands unless there was legal necessity or justification for doing so. Even under the principles of Hindu Law her action is illegal and the order of the Revenue authorities cannot render it ~~illegal~~ valid and binding on the plff.

(g) Deft 2 has committed a gross fraud on the revenue authorities. In her application she represented that she had incurred debts for the litigation and that it was absolutely necessary to - convert the lands so as to enable her to dispose them of and pay off the debts. But immediately after the order of the revenue Tribunal deft 2 has made a gift of acres 99 gunthas 26 of lands and has sold only 6 acres. She has not even paid off the Tagai loan which she had taken from the Government. This conduct of deft No.2 is a clear indication of the fraud contemplated and actually committed by her. Deft No.2 cannot in law be allowed to take advantage of her own - fraudulent conduct to the prejudice of plff.

6. In view of the above stated grounds and on other various grounds, it is submitted that the order of the Revenue Tribunal is ultra vires and not binding on the plff. Plff is the grandson (deceased's son's son) of Bhimaji and is the next reversioner - entitled to inherit the properties after the life-time of deft No.2. In order to safeguard his own reversionary interests it has become necessary to file this suit for a declaration that the order of the Revenue Tribunal is ultra vires and not binding on plff after the lifetime of deft No.2 and for consequential relief.

7. Deft No.3 is the donee under a gift deed executed by deft No.2, Defts 4 and 5 have taken a sale deed on 27-5-1942 in respect of a portion of S.S.No.104 from deft 2. Deft No.6 has taken a sale deed in March 1943 in respect of the rest of the said G.R.No.104. Both the gift and the sale are invalid in view of the order of the Revenue Tribunal being ultra Vires and the said alienations cannot have any validity beyond the lifetime of deft 2.

8. Deft No.7 claims to have been adopted by deft 2 recently. Deft 2 has no right or power ~~ex~~ to any adoption. Her power to adopt came to end when her son Venkatesh died leaving behind him his widow Laxmibai and it cannot be revived. Under the provisions of Watan Law also, deft No.2 has no power to make any adoption. The factum and also the validity of deft No.7's adoption are not admitted. Even

assuming without admitting that the adoption of deft No.7 is proved and valid, deft No.7 cannot acquire and has not acquired any right in any property of the adoptive family. Plff does not admit the claim of deft No.7 as an adopted son. Still he is made a party just to avoid further litigation.

9. The cause of action accrued when the decision of the Revenue Tribunal was communicated to the plff i.e. in October 1942.

10. The Province of Bombay being a party to the suit, the suit is filed in this court. Notice under section 80 of the Civil Procedure Code has been delivered to the Collector of Dharwar for the suit against deft 1. The said notice has been delivered to the Collector by registered post. Amended as per section 106.

9-11-1944.

Sd/ ~~YBx~~ M.S.B.

F.C.S.J.

11. As plff is seeking two declarations, a court-fee of Rs.30/- is paid on the plaint. For purposes of jurisdiction, the suit is valued at Rs.400/-.

12. Plff prays as follows:-

1). Be it declared that the order of the Revenue Tribunal is ultra vires and null and void and not binding on plff and the reversionary interests of plff.

2.) Be it declared that the alienations by deft No.2 in favour of defts 3 to 6 are void after the life ~~time~~ of deft 2.

3.) All costs of suit be awarded.

4.) Any other reliefs to which plff may be entitled in law equity and justice be awarded.

This suit coming for final disposal before Mr. M.S.Bagali, First Class Sub-Judge, Dharwar, in the presence of Messrs Jamkhandi and Betdur pleaders for the plff and Mr. Malapur Government Pleader for deft No.1. Messrs. Dixit and Durg pleaders for deft No.2 Mr.Viadya pleader for defts 3 to 6 and Mr.Kanvikar for deft No.7 ~~ix~~ it is ordered and decreed that:-

Suit dismissed with costs. Plff to pay the costs of
defts 1 to 6. One set for deft No.1 and one set for defts 2 to 6.
Deft No.7 to bear his own costs.

Costs of suit.

Plff	Deft No.1	Defts 2 to 6	Deft No.7.
1. Stamp for plaint.	Rs.30-0-0	Rs.0-0-0	
2. Vakalat	0-8-0	0-0-0	1-0-0
3. Petitions.	3-10-0	4-8-0	2-0-0
4. Pleader's fees. on Rs.2000/-	100-0-0	100-0-0	100-0-0
5. Process fees	5-0-0		1-0-0
6. Copying fees.	30-8-0	6-5-8	8-13-0
	139-2-0	110-13-8	2-0-0
Rejected applns.	3-10-0	4-8-0	2-14-0
	Rs.135-8-0	106-5-8	109-13-0
			102-0-0

Given under my hand and seal of the court this 20th day
of November 1944.

Sd/ K.R.Gadad.

Karkun.

Sd/ M.S.Pagali.

F.C.Sub-Judge.

29-11-1944.

Suits.

Dharwar.

For a declaration that the Order of the Bombay Revenue Tribunal, No. 0/242, dated the 9th September 1942, is ultra vires; and that alienations made by defendant No. 2 in favour of defendants Nos. 3-5 are void.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 2300
Bombay Castle, 16 March 1945.

Read Government Resolution, Legal Department No. 339, dated the 12th January 1945.

Letter from the Collector of Dharwar, No. LAW.432, dated the 27th February 1945, forwarding a copy of the letter from the District Government Pleader, Dharwar, No. 116 dated the 16th February 1945, and stating that the plaintiff in the suit noted in the margin has now preferred an appeal

In the Court of the First Class Sub-Judge,	:	No. 8 of
Dharwar.	:	1945 in
Civil Suit No. 305 of 1943.	:	the Court
Pralhad Kalso Kulkarni of Navalgund. Plff.	:	of the
vs.	:	District
The Province of Bombay and 6 Ors. Defts.	:	Judge,
Claim Rs. 400.	:	Dharwar,
	:	against
	:	the --

decision of the First Class Sub-Judge, Dharwar, dated the 20th November, 1944, and requesting sanction to its defence

Endorsement by the Commissioner, S.D. No. L.S.T. 287, dated the 6th March 1945, forwarding the above with his concurrence.

RESOLUTION: - Sanction is accorded to the defence of the Civil Appeal No. 8 of 1945 in the Court of the District Judge, Dharwar, on the lines of the brief accompanying Government Resolution, Legal Department No. 3042, dated the 22nd April 1944 and the favourable grounds contained in the judgment of the First Class Sub-Judge, Dharwar, dated the 20th November 1944.

By order of the Governor of Bombay,

Alarum

Original

P.N. MOOS,
Secretary to Government.

To

The Revenue Department,
The Commissioner, S.D.,
The Collector of Dharwar,
The District Government Pleader, Dharwar.

Submitted for approval and signature

Ms. *Mr*
1413 PA 2/14/3

Issued
8/2
16/3

Submitted after issue
2 file in S Dwr 4/44.

Mr
1713

P.A.
Pr.
1713

2
S.D. 4/44
9/3

Record was applied for on the ()
day of March 1946.

Record Keeper.

It was ready for delivery on the ()
day of March 1946.

Record Keeper.

It was delivered on the ()
day of 1946.

Record Keeper.

Received on 4/1/1945.

Registered on 5/1/1945.

Decided on 5/3/1946.

Duration- One year and two months.

In the Court of the Assistant Judge, Dharwar.

At Dharwar.

Ex. 15.

Appeal No. 8 of 1945 from decree in Civil suit
No. 305 of 1943 of the Court of the Civil Judge,
Senior Division of Dharwar (Mr. M.S.Bagali).

Pleaders.

r. Jankhandi.

Pralhad Kalso Kulkarni of Navalgund.

.... Appellant.
Original Plff.

against

3. B.S.Sawkar.

N.K.Lixit.

Vaidya for Nos. 3
to 6.

Kanvikar.

1. The Province of Bombay.
2. Bhimabai Bhritar Ganpatrao Kulkarni of
Navalgund.
3. Shamacharya Krishtacharya Rotti minor by his
guardian-ad-litem mother Rukminibai Bhritar-
Krishtacharya Rotti of Do..
4. Doddabhimappa (Hanmappa Bajantri of Do..
5. Sanbhimappa (
6. Nagappa Fakirappa Sangati of Navalgund.
7. Gurubhimacharya Krishtacharya (alleged adoptive
father Ganpatrao Kulkarni) Rotti minor by his-
guardian-ad-litem genetive father Krishtacharya-
Gurubhimacharya Rotti of Navalgund.

..... Respondents.
Original Defendants.

Claim :- Rs 400/-.

J u d g m e n t

This appeal arises out of a suit brought by the plaintiff to obtain a declaration that the decision of the revenue tribunal dated 9/9/1942 was illegal and -- to obtain a further declaration that the alienations of the suit lands made by defendant No.2 in favour of defts Nos. 3 and 6 were not binding on the reversion. The suit was brought by the plaintiff as the next presumptive reversioner entitled to the suit property on the death of deft No.2.

The facts which gave rise to the suit under appeal may be briefly stated with advantage. The suit lands were the Kulkarni Vatan lands held by defendant No.2's husband since deceased. Deft No.2's husband died in the year 1893 without leaving any issue. Deft No.2 adopted one Venkatesh as a son to her deceased husband. Venkatesh died in the year 1918 survived by his wife Laxmibai. Laxmibai died in the same year. Deft No.2 was not entitled to succeed to the suit property as an heir of her son Venkatesh under the Bombay Act V of 1866 (Bombay Hereditary Offices Act). Plaintiff's grandfather Bhimaji was entitled to succeed to the Vatan lands in suit in preference to deft No.2. Plff's grandfather -- accordingly got possession of the suit lands. Plaintiff's father had predeceased Bhimaji. Plaintiff's mother had applied against Bhimaji in connection with the wahivat of the Vatan lands. Bhimaji was living separately from plaintiff and his mother. As there was none to take care of Bhimaji during his old age, he began to live with deft No.2. By a will dated 24/2/1925 Bhimaji bequeathed the suit lands to deft No.2. Bhimaji then died. Plaintiff took possession of the suit lands on the death of Bhimaji. Deft No.2 thereupon sued plaintiff for possession of the said lands. It was Special suit No.107 of 1925 on the file of the First Class Subordinate Judge, Dharwar. That litigation was fought up to the High Court and it terminated

on 22nd December 1937. Deft No.2 got possession of the suit lands from the plaintiff. It was held in that litigation that deft No.2 was entitled to get the suit lands under the will of Bhimaji as she was a Vatandar of the same Vatan. On 11th March 1942 deft No.2 applied to the Collector, Dharwar, for permission to relinquish the suit Kulkarni Vatan lands and for the said land - being regranted to her as raiotwari lands under Rules 74 A and 74 B of the Land Revenue Rules. This application was hotly contested by the present plaintiff. It will appear that deft No.2 wanted to get the suit lands converted into raiotwari lands in order to enable herself -- to alienate the same. The Collector of Dharwar granted deft No.2's application and converted the suit lands into raiotwari lands. They were granted to deft No.2. Plaintiff's appeal to the Revenue tribunal was dismissed on 9/9/1942. Deft No.2 then alienated the suit lands in favour of defts Nos. 3 to 6. Eventually on 26/5/1943- she adopted deft No.7 as a son to her deceased husband. Plaintiff therefore brought the suit under appeal on 26/7/1943 to obtain the declaration stated above.

It will thus appear that plaintiff brought the suit under appeal as the next presumptive reversioner -- challenging the order passed by the revenue authorities converting the suit Vatan lands into raiotwari lands and further disputing the alienations made by deft No.2. Plaintiff must therefore show that deft No.2 had acquired only a life interest under the will of his grandfather. However plaintiff contended that the decision in Special-suit No. 107 of 1925 was not binding on him in his - capacity as a reversioner. He disputed the correctness of the decision arrived at in that suit. Consequently he contended that deft No.2 was not the watandar of the same Vatan and hence she was not entitled to hold the

suit lands as a Watandar. This contention was raised as under section 15 of the Bombay Hereditary Offices Act the word " holder " was defined to include any person dealt with as representative of the person beneficially interested. According to the decision in Bhikaji v. The Secretary of State For India (27 Bom. L.R. 463) the widow of a watandar holding an interest in watan property for the term of her life is not a " holder " within the meaning - of that term in section 15 of the Bombay Hereditary Offices Act. Plaintiff therefore disputed the decision arrived at in -- Special suit No.107 of 1925 and contended that the action taken by the revenue authorities on the application of deft No.2 under rules 74 A and 74 B of the Land Revenue Rules was illegal and deft No.2 was not entitled to alienate the lands which were not legally converted into raiotwari lands. He further disputed the alienations made on the ground that they were without any necessity and therefore not binding on the reversion. As regards deft No.7, plaintiff contended that his adoption was illegal as deft No.2 after the death of her adopted son and her daughter-in-law had no power left in her to adopt a son to her deceased husband.

The suit was resisted by all the defendants. Their contentions were that deft No.2 was a Watandar of the same Watan and that the consideration of that question in the present suit was barred by the principle of res judicata in view of the -- decision of the High Court in First Appeal No. 321 of 1935. It was further contended that under the will of Bhimaji deft No.2 got an absolute estate and hence the relinquishment by her under section 15 of the Bombay Hereditary Offices Act was quite legal and proper. It was further contended that plaintiff had no right to question the legality or propriety of the action taken by deft No.2 and that the suit was barred under section 4 of the Bombay Revenue Jurisdiction Act. Deft No.7 maintained that - his adoption was valid. Deft No.1 contended that the notice

under section 80 of the Civil Procedure Code was not proper.

On these pleadings issues were framed at Ex.58- in the lower Court. The principal issues considered in the lower Court were whether plaintiff was entitled to maintain that deft was not a watandar of the same Watan in view of the decision of the High Court in First Appeal No.321 of 1935 and whether under the will of Bhimaji deft No.2 got only a life estate. The question whether deft No.2 was a watandar of the same watan and as such legally entitled to get the suit lands under the will of Bhimaji was also considered. The questions whether the suit was barred under the Bombay Revenue Jurisdiction Act and whether the adoption of deft No.7 was valid were also considered. The lower Court held that plff was not entitled to allege that deft No.2 was not a watandar of the same watan and that the alienation made by a will of the plaint lands by Bhimaji was illegal. The lower Court held that the plff could contend that the will of Bhimaji conferred only a life interest on deft No.2. The lower Court however held that the said will conferred full proprietary interest on deft No.2. The lower Court further held that deft No.2 was a watandar of the same watan; the alienations made by deft No.2 were ~~was~~ binding on the plaintiff and the adoption of deft No.7 was not valid. Plaintiff's suit was accordingly dismissed.

In appeal all the findings recorded by the lower Court against the plff were disputed. It is not necessary to consider all these questions in the present appeal. It is evident that the suit was brought by the plaintiff as the next presumptive reversioner. It implies that - deft No.2 was legally entitled to hold the suit lands -- though according to the plaintiff she was entitled to a life estate in them. It was not open to the plaintiff -

to contend that deft No.2 was not legally entitled to the suit lands and that she was practically a trespasser in respect of the same. That is beyond the scope of a suit brought by a reversioner disputing the action taken by an alleged limited owner in applying under rules 74 A and 74 B of the Bombay Land Revenue Rules and in alienating the said lands. It is therefore difficult to see how the plaintiff could have disputed the decisions arrived at in the previous litigation that deft No.2 was a watandar of the same Watan. It is no doubt open to the plaintiff suing as a next reversioner to contend that under the will of Bhimaji deft No.2 got only a life estate and hence she was not entitled either to apply for conversion of the lands and to alienate the same. Thus the important question to be considered in this appeal is whether deft No.2 got a life estate under the will of Bhimaji (Ex.89).

On behalf of the respondents it was contended that the consideration of the question whether deft No.2 got a life estate or an absolute estate under the will of Bhimaji was barred by the principle of res judicata. The contention was that the present plff who was a defendant in the previous litigation ought to have made it a ground of defence that deft No.2 had got only a life estate under the will of Bhimaji and as he did not do so it must be deemed to have been decided against him by necessary implication. Reliance was placed on the provisions of Explanation ~~Wxx~~ ~~xx~~ ~~xxxxxx~~ to section 11 of the Civil Procedure Code. Apart from the question whether the plff is claiming in the present suit in a capacity different from the capacity in which he was sued in the previous litigation, it is apparent that it was not necessary for the plff to have made this contention a ground of defence in the previous litigation. Deft No.2 had sued the plaintiff to recover possession of the suit lands claiming under the will of Bhimaji. The questions which arose for consideration in that litigation were whether the will was proved and whether deft No.2 was legally entitled to a bequest mentioned in the will as a watandar of the -- sandwatan.

The question whether deft No.2 got an absolute estate or limited estate under the will did not arise - for consideration in that litigation. . ~~It was not necessary for the plff to have raised that contention~~ It was not necessary for the plff to have raised that contention by way of defence in the previous litigation as deft No.2 ^{would} have been entitled to possession of the suit lands from the plff even if it was held that she had got a limited estate under the will of Bhimaji. It is therefore not possible to accept the contention of the respondents that the consideration of the question whether deft No.2 got an absolute estate or limited estate under the will of Bhimaji was barred by the principle of res judicata. The -- question must therefore be considered on merits.

The lower Court found on a construction of the will (Ex.89) that deft No.2 got an absolute interest under it. This finding arrived at by the lower Court was disputed before me. It was contended that on a proper construction of the will (Ex.89) deft No.2 got only a limited estate. In Ex.89 the testator first stated that his son Kalso was dead and that his daughter-inlaw and the plff were being looked after by him. Despite this his daughter-inlaw filed an application for wahiwat of the watan property and ceased to take care of him. As there was none to take care of him, he requested deft No.2 to allow him to stay with her and to supply him with food and to look after him. The testator - stated that he was old and weak in body. The testator further stated that he was well looked after by deft No.2 and hence he was quite pleased with her. The testator further stated that he got the property of deft No.2's husband on the death of her adopted son Venkatesh. The testator expressed that in taking this property he had done a ^Ywrong thing and he felt for it. He --

the refore bequeathed the suit lands to deft No.2 as she had taken care of him and as the property originally belonged to her husband. The testator therefore stated that " I have got a desire that after my death you should be made the owner of the property/which I have taken possession of from the deceased Venkatesh ". The testator therefore bequeathed the property to deft No.2 in the following words :

" You are the owner after my death of the following property"
" You should become the owner of all the above mentioned lands. After my death you should take possession of the said lands and should enjoy the lands as the owner in any manner you like. My daughter-inlaw and my son Pralhad have no connection with this and have no right whatsoever over them ". Finally the testator stated that " After my death you take possession of the lnds and enjoy the same as owner as you like ". At the end it was stated by the testator that his liability should be met from the other property and that it should not be paid out of the property of which " you have become the owner ". There can thus be no doubt that at more than one place, the testator by using the word " owner " expressed his intention to confer an absolute estate on deft No.2. Atthe same time there were no words used in the context to indicate that full proprietary rights were not intended to be conferred. The testator made it clear that he had no love lost for the present plff. He also made it clear that the suit property was not his ancestral property and that his liability should be met from the other property. The context and the surrounding circumstances therefore make it clear that the word " owner " was used to denote full proprøtetary rights which the testator was conferring on deft No.2. There was no bequest over. It has been held that a bequest to a woman as a Malik imports full proprietary rights unless there is something in the context to qualify it. Vide Bhaidas Shivadas v. Bai Gulab (24 Bom. L.R. 551) and Shalig Ram v. Chanrajit Lal (32 Bom.L.R. 1578). It is clear on a perusal of Ex.8^o that the testator

to confer full propriety rights on deft No.2. It was contended by the learned pleader for the appellant that the testator did not intend to confer any interest on deft No.2 in excess of what she had got when she first held the lands on the death of her husband. It is true that after deft No.2's husband's death, she held the suit lands as a female Watandar. But the lands had passed to the plff's ~~grandfather~~ ~~grandfather~~ grandfather. It is not possible to accept the contention that the intention of the testator was to confer only a life estate on deft No.2 as she had only got a life estate in them on the death of her husband. There is nothing in the context of Ex.89 to come to that conclusion. The testator could have only thought of conferring a life estate on deft No.2 if he had an idea of making a bequest over or if he had an idea that on the death of deft No.2 his grandson the present plff should succeed to the property. On the contrary it appears clear from the will that the testator did not intended that on the deft No.2's death, the present plff should succeed to the property. The reason is that the testator realized that the suit lands originally belonged to the husband of deft No.2. Though legally he became entitled to this property on the death of Venkatesh, morally he felt that he should not have deprived deft No.2 of the property. Moreover he appreciated the fact that deft No.2 was deprived of the property in suit, she consented to himself going and staying with her. Not only that but in his old age he was taken care of by deft No.2 though neglected by plaintiff and his mother. It was for this reason that he banished from his mind all consideration for the plff so far as the suit property is concerned and conferred absolute ownership in respect of it on deft No.2. It is therefore not possible to accept the contention that as deft No.2 was originally entitled to a life estate in the property the testator

did not intend to conger any higher interest on her. -

I therefore agree with the finding recorded by the lower Court that deft No.2 took an absolute ~~xxxxx~~ estate under the will of Bhimaji.

It is now necessary to consider the effect of the finding. Left No.2 being absolutely entitled to the suit property, it is clear that the present suit filed by the plff is untenable. It is important to remember that the plff has filed the present suit as a reversioner. As deft No.2 is absolutely entitled to this property, there is no question of any reversionary -- interest opening on the death of deft No.2 to the plff as the next presumptive reversioner or to any other reversioner who might be in the existence at that time. The succession to this property will be governed by different principles. It will be governed by the principle of succession to a non-technical Straddhan. That being the case, plaintiff cannot maintain this suit as a reversioner. It is therefore not necessary to consider the other questions involved in the case. The respondents contended that the consideration of the question whether deft No.2 was a - Watandar of the same Vatan and thus legally entitled to the lands bequeathed to her under the will of Bhimaji was barred by the principles of res judicata in view of the decision in Special suit No.107 of 1925 confirmed by the decision of the High Court in First Appeal No.321 of 1935. The appellant's contention was that no such bar of res judicata arose as he was suing in a different capacity. In the previous litigation plff was sued as a person in possession of lands claiming to be the succeeding watandar. In the present case plff sues as the next presumptive reversioner. It is an ~~xxxxxx~~ accident that plff who was defendant in the prior litigation happens to be the next presumptive reversioner. But such a suit must be deemed to have been filed by the next presumptive reversioner on behalf of the whole body of reversioners. Therefore the capacity in which the plff was suing was entirely different and hence no bar -

of res judicata can be applied to the consideration of the question whether deft No.2 was a Watandar of the same Watan and as such legally entitled to the suit lands under the will (Ex.89) is within the scope - of the present. If it is held that deft No.2 was not entitled, she becomes virtually a trespasser in respect of the suit lands. It cannot then be said that she has got any interest whatsoever in the suit lands. It is evident that plff could not have sued as a succeeding watandar for a declaration that deft No. 2 was not a Watandar of the same Watan as he would have been met successfully with a plea of the bar of res judicata. He had therefore preferred to sue as a reversioner. Such a suit implies that the widow has got a life-estate in the property which she is not entitled to alienate or to deal with it in the manner mentioned in Rules 74 A and 74 B of the Bombay Land Revenue Rules. Thus the question is not whether there is a bar of res judicata for the consideration of the question whether deft No.2 is a Watandar of the same Watan or not. The real question for consideration is whether plff is entitled to raise that contention in the present litigation having regard to the scope of the suit. I hold that plff who has filed this suit as a reversioner is not entitled to raise the question whether deft No.2 is a Watandar of the same Watan. The reason is that at the moment it is held that deft No.2 is not the Watandar of the same Watan, a suit by a reversioner as such becomes incompetent.

I will now briefly consider other questions -- involved in the case. As regards the question whether the suit was barred under section 4 of the Bombay Revenue Jurisdiction Act, it is apparent that the suit

would not be barred if the action taken by the revenue authorities was ultra vires of them. If deft No.2 was not a holder within the meaning of that term used in section 15 of the Bombay Hereditary Offices Act the action taken by the Revenue authorities would have been held ultra vires of them. In that case it would have been necessary to consider whether a person holding a life estate is a holder within the meaning of that term used in section 15 of the Bombay Hereditary Offices Act. It is not necessary to decide that question as I have found that deft No.2 has got absolute estate under the will of Bhimaji . It cannot then be disputed that deft No.2 was a holder and therefore she was entitled to make an application under rules 74 A and 74 B of the Land Revenue Rules. It follows that the action taken by the revenue authorities was intra vires of them. The suit will therefore be held ~~xxxxx~~ barred under section 4 of the Bombay Revenue Jurisdiction Act. As deft No.2 is absolutely entitled to the suit lands, she is entitled to dispose them off in any manner she likes after they were converted into raiotwari lands. Deft No. 7 came on the scene on 26/5/1943. It was held by the lower Court that his adoption was illegal. It is not necessary to consider this question in appeal. If deft No.2 had got a life estate under Ex.89, it would have been necessary to consider that question as a reversioner's suit can be defeated by a widow adopting a son to her deceased husband. Nor is it necessary to decide the -- principal question involved whether deft No.2 was the Watandar of the same Watan. As between plff claiming to be a succeeding Watandar and deft No.2 it was decided in the previous litigation. It does not arise for consideration in this suit filed by the plaintiff as the next presumptive reversioner.

Result is that the plff's suit fails as he is not -- entitled to maintain it as the next presumptive reversioner in view of Ex.89 by which an absolute estate was conferred on def

The decree passed by the lower Court dismissing the suit is correct. It must be confirmed and the appeal be - dismissed with costs.

O r d e r

A Appeal is dismissed with costs. A

5th March 1946.

Sd. N.C. Vakil.

Assistant Judge.

Grounds of appeal

1. The decision of the lower Court is contrary to law and the evidence in the case.
- 2 The lower Court erred in holding that the suit was barred under the provisions of the Revenue Jurisdiction Act
- 3 The lower Court has ignored the principles of law ~~xx~~ the the Revenue Jurisdiction Act which affects the ordinary jurisdiction of Courts ought to be construed strictly.
- 4 The appellant's suit does not fall either under para 1 or 3 of clause (a) of section (4) of the aforesaid act.
- 5 38 Bom. L.R. ~~229x~~ 1309 clearly distinguishable, and has been distinguished in 39 Bom. L.R. 289. The principles laid down in the latter decision are not properly appreciated and understood by the trial Court.
- 6 The consideration referred to by the trial Court are extraneous and irrelevant.
- 7 The finding on issue No.3 is erroneous.
- 8 The lower Court ought to have held that deft No.2 was not a watandar of the same watan.
- 9 Further, the lower Court erred in holding that the will assuming it could be validly made in favour of deft 2 - conferred on her an absolute estate. The will has not been properly construed and interpreted by the trial Court
- 10 The decisions cited are all distinguishable. The circumstances under which the will was made in the present case exclude the intention of conveying on --

absolute estate.

11 The lower Court has approached the question of res judicata from a wrong stand-point.

12 The suit is filed by appellant as the next reversioner, and for safeguarding his reversionary interest after the lifetime of deft 2. Hence, it is not a case of a party litigating under the same title or capacity. It is as if a different person had filed the present suit. Hence the principle of res judicata is not at all applicable to the present case.

13 In any event, without prejudice to the above contention, there could be no question of res judicata so far as -- deft 1 is concerned, as Government was not a party to the previous litigation.

14. The lower Court erred in extending the scope of the principles of Res Judicata.

15 The lower Court ought to have held that it was not open to deft 1 to impose the bar of Res Judicata on plff by alleging that the previous decision had been accepted by them.

16 The lower Court erred in merely accepting the reasons as stated in the previous decision, which cannot be supported either in law or on the facts of the case.

17 It may be noted that the G.R. referred to in the previous decision was not before the Court then. Deft 2 was simply in possession of some lands for her maintenance; and the mere possession by a non-watandar, of some lands for maintenance, cannot confer the status of a Watandar. Such a position -- is opposed both to principle and authority.

18 The recent rulings on the interpretation of " Watandar " have not been referred to at all by the trial Court.

18A The proposition that mere refusal by the Collector to restore Watan lands amount to sanction of alienation under section 5 -- of the Watan Act , is untenable in law and opposed to authority.

19. The lower Court ought to have held that the will by Bhimaji was invalid.

20 The lower Court failed to note that the Revenue authorities including the Revenue Tribunal, considered the appellant as an individual who was bound by the previous decision and that they overlooked the fact that he claimed as a reversioner.

21 The aforesaid distinction not having been kept in view, the Revenue authorities were misled into a wrong conclusion.

22 The lower Court ought to have held that it was not within the jurisdiction of the Revenue authorities and the Revenue Tribunal as to whether deft 2 was a Watandar or not. They could act only if her status as a watandar was admitted. If it was disputed as in fact it was disputed, they ought to have referred deft 2 to a Civil suit.

23 The lower Court ought to have held that the rules 74 A, 272 B are ultra vires.

24. In any event, the lower Court erred in holding that deft. was a "holder".

25 The orders of the Revenue Tribunal and the Revenue authorities ought to have been held as bad in law, void and ultra vires.

26 The lower Court erred in holding that the factum of adoption was proved, while rightly holding that it was bad in law.

27 Proper presumptions and inferences are not drawn and probabilities are not properly appreciated.

Typed by,

Read by,

Compared by,

True Copy

B. N. Annamalai
Govt Pleader
Clerk of the Court.

ధావనం ఇప్పుడు అధిష్టాంశ బుద్ధి క్షేమము

మంత్రం ధావనం. మంత్రం 21 10

అక్షరములు 447 నకు దుకుంబము

అక్షరములు .. ప్రస్తుత కల్పములో భాగము మంత్రం బుద్ధి. వలె. 21 10
మంత్రం 21 10 నవలకుండు. (మంత్రము వలె)

మంత్రం

(1) విష్ణు మంత్రము చదివే.

(2) భావనా మంత్రం బుద్ధి క్షేమము కలదు. కాన కలకలము 63
మంత్రం. మంత్రము 21 10 నవలకుండు.

(3) శ్యామ భావనా మంత్రం బుద్ధి క్షేమము కలదు. కాన కలకలము 63
మంత్రం. మంత్రము 21 10 నవలకుండు.

(4) దీక్షా మంత్రం బుద్ధి క్షేమము కలదు. కాన కలకలము 63

(5) నవలకుండు. మంత్రం 21 10 నవలకుండు

(6) నవలకుండు. మంత్రం 21 10 నవలకుండు

(2) దుకుంబ భావనా మంత్రం బుద్ధి క్షేమము కలదు. కాన కలకలము 63
మంత్రం. మంత్రము 21 10 నవలకుండు (21 10 నవలకుండు).

ధావనం ఇప్పుడు అధిష్టాంశ బుద్ధి క్షేమము కలదు. కాన కలకలము 63
మంత్రం. మంత్రము 21 10 నవలకుండు (21 10 నవలకుండు).

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ఎవరూ అంతా అందరినీ ఒకరినొకరు అర్థం చేసుకోవడానికి ప్రయత్నించాలి.
 ప్రతి ఒక్కరూ ప్రతీ ఒక్కరినీ అర్థం చేసుకోవాలి.

ఈ అమెరికన్ రిపబ్లికన్ పార్టీకి చెందిన ఒక వ్యక్తి ఈ విషయం
 గురించి, 2 వేల అమెరికన్ డాలర్లతో ఈ కార్యక్రమం ప్రారంభం
 చేయబడుతుంది. ఈ కార్యక్రమం గురించి మరింత వివరాలు

[illegible]

అంబ దీక్షు తొలుతు గనో మరచిపోయిన నందగూడెనేమియును
ది కురు నదే మరచి పోయినాక మాకు మరతించలేము.

3. ಶ್ರೀ 50 ದಿ ಪೀಠಿಕೆ. ಸ. 50/10/46.

sd/- N.C. Vakil
Asst. Judge
8/3/46

True copy
B. Nannabai
Court Clerk.

Suits.

Dharwar.

For a declaration that the Order of the Bombay Revenue Tribunal, No. 0/242, dated the 9th September 1942, is ultra vires; and that alienations made by defendant No. 2 in favour of defendants Nos. 3-5 are void.

GOVERNMENT OF BOMBAY.

Legal Department.

Resolution No. 3362

Bombay Castle, 6th April 1946.

May

+ Sup S. file
below

+ P. 3 a/c

+ Read Government Resolution, Legal Department, No. 2100, dated the 16th March 1945.

+ Letter from the District Government Pleader,

In the Court of the First Class Sub-Judge, Dharwar. Civil Suit No. 305 of 1943. Pralhad Kalso Kulkarni of Navalgund. Plaintiff; Versus The Province of Bombay and 6 others. .. Defendants. Claim-Rs. 400/-.	}	Dharwar, No. 713, dated the 27th March 1946: Stating that the Civil - Appeal No. 8 of 1945 filed
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by the plaintiff in the suit noted in the margin, in the Court of the ^{Assistant} District Judge, Dharwar, against the decision of the First Class Sub-Judge, Dharwar, dated the 20th November 1944, was decided by the ^{Assistant} District Judge, Dharwar on the 5th March 1946 when the following order was passed

"Appeal is dismissed with costs."

+ F. 1 2 10

+ Letter from the District Government Pleader, Dharwar, No. 719 dated the 29th March 1946 forwarding the uncertified copies of the judgment and decree.

Issued
9/5
26/5.

RESOLUTION. - The result of the appeal is recorded.

By order of the Governor of Bombay,

Original.

R. M. Mehta
R.M. MEHTA,

Assistant Secretary to Government.

Submitted for signature.
10/5/46

To
The Revenue Department,
The Commissioner, S.D.,
The Collector of Dharwar.

A.S. PZ
3/5/46
LX.

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Submitted after issue

2 File in S-Dur 4/44

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